

EXHIBIT 2

Transcript of Mike Holley, Corporate Representative
Conducted on November 19, 2024

1 (1 to 4)

1	3
1 UNITED STATES DISTRICT COURT	1 A P P E A R A N C E S
2 FOR THE DISTRICT OF NEVADA	2
3 - - - - - x	3 ON BEHALF OF THE PLAINTIFF:
4 JAMES DEPPOLETO, :	4 PATRICK HARVEY, ESQUIRE
5 Plaintiff, :	5 HUSCH BLACKWELL, LLP
6 v. : Civil Action No.:	6 511 North Broadway, Suite 1100
7 TAKEOVER INDUSTRIES, : 2:22-CV-02013	7 Milwaukee, Wisconsin 53202
8 INCORPORATED, et al., :	8 (414) 273-2100
9 Defendants. :	9
10 - - - - - x	10
11	11 ON BEHALF OF THE DEFENDANTS:
12 Videotaped Deposition of	12 DON BENNION, ESQUIRE
13 TAKEOVER INDUSTRIES, INCORPORATED,	13 LAW OFFICE OF DON BENNION
14 By and through its Designated Representative,	14 10801 West Charleston Boulevard
15 MIKE HOLLEY	15 Las Vegas, Nevada 89135
16 Conducted Virtually	16 (702) 333-0777
17 Tuesday, November 19, 2024	17
18 8:13 a.m. PST	18
19	19 ALSO PRESENT:
20	20 Mylene Santiano, Videographer
21	21
22	22
23 Job No.: 559922	23
24 Pages: 1 - 127	24
25 Transcribed By: Catherine Galati	25
2	4
1 Videotaped Deposition of TAKEOVER INDUSTRIES,	1 C O N T E N T S
2 INCORPORATED, By and through its Designated	2
3 Representative, MIKE HOLLEY, conducted virtually.	3 EXAMINATION OF MIKE HOLLEY PAGE
4	4 By Mr. Harvey 6
5	5
6	6 E X H I B I T S
7	7 (Attached to the transcript.)
8	8 DEPOSITION EXHIBIT PAGE
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11	11 Exhibit 3 5/25/22 Promissory Note 18
12	12 Exhibit 4 5/20/22 Joint Written Consent 19
13	13 Exhibit 5 7/6/22 Note Agreement Amendment 22
14 Pursuant to notice, before Charlie McGrath,	14 Exhibit 6 7/6/22 Promissory Note 23
15 Notary Public in and for the State of California.	15 Exhibit 7 7/1/22 Joint Written Consent 24
16	16 Exhibit 8 8/19/22 Note Agreement Amendment 26
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Transcript of Mike Holley, Corporate Representative
Conducted on November 19, 2024

2 (5 to 8)

<p>5</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins Media</p> <p>3 Number 1 in the videotaped deposition of Michael</p> <p>4 Holley, corporate representative of Takeover</p> <p>5 Industries, Incorporated, in the matter of</p> <p>6 Deppoleto versus Takeover Industries,</p> <p>7 Incorporated, et al., in the United States</p> <p>8 District Court for the District of Nevada, Case</p> <p>9 Number 2:22-CV-02013.</p> <p>10 Today's date is 11/19/2024. The time on</p> <p>11 the video monitor is 8:13 a.m. Pacific Standard</p> <p>12 Time. The remote videographer today is Mylene</p> <p>13 Santiano, representing Planet Depos. All parties</p> <p>14 of this video deposition are attending remotely.</p> <p>15 Would counsel please voice-identify</p> <p>16 themselves and state whom they represent, starting</p> <p>17 with the taking attorney.</p> <p>18 MR. HARVEY: Patrick Harvey for the</p> <p>19 plaintiff.</p> <p>20 MR. BENNION: Don Bennion for the</p> <p>21 defendants, specifically today Michael Holley as</p> <p>22 the designated representative of Takeover</p> <p>23 Industries, Incorporated.</p> <p>24 THE VIDEOGRAPHER: The court reporter</p> <p>25 today is Charlie McGrath, representing Planet</p>	<p>7</p> <p>1 Q Good. Yourself?</p> <p>2 A Good, thanks.</p> <p>3 Q Good. Could you state and spell your full</p> <p>4 name for us, please?</p> <p>5 A Michael Holley, M-I-C-H-A-E-L; Holley is</p> <p>6 H-O-L-L-E-Y.</p> <p>7 Q And is your address still the same as it</p> <p>8 was in your last deposition a couple weeks ago?</p> <p>9 A It is.</p> <p>10 Q Any new plans to move since then?</p> <p>11 A No.</p> <p>12 Q Okay. And I know we deposed you a couple</p> <p>13 weeks ago, so I don't need to go over the</p> <p>14 deposition rules again; is that correct?</p> <p>15 A I'm good. Yeah.</p> <p>16 Q Okay. I'm just going to remind you that</p> <p>17 if you answer a question, I'm going to assume that</p> <p>18 you understood it. Fair?</p> <p>19 A Yes.</p> <p>20 Q Okay. Has your employment changed since</p> <p>21 your last deposition?</p> <p>22 A No.</p> <p>23 Q Okay. I'm going to show you my screen.</p> <p>24 Are you able to see my screen, Mr. Holley?</p> <p>25 A Yes.</p>
<p>6</p> <p>1 Depos. The witness will now be sworn.</p> <p>2 THE REPORTER: I am a notary authorized to</p> <p>3 administer oaths, and this deposition will be</p> <p>4 recorded by electronic means. All parties</p> <p>5 understand and agree that any certified transcript</p> <p>6 produced from the recording of this proceeding is</p> <p>7 intended for all uses permitted under applicable</p> <p>8 procedural and evidentiary rules and laws and</p> <p>9 shall constitute written stipulation. The parties</p> <p>10 stipulate to the use and certification of this</p> <p>11 testimony consistent with applicable law of such.</p> <p>12 Hearing no objection, I will now swear in</p> <p>13 the witness.</p> <p>14 Whereupon,</p> <p>15 MIKE HOLLEY,</p> <p>16 being first duly sworn or affirmed to testify to</p> <p>17 the truth, the whole truth, and nothing but the</p> <p>18 truth, was examined and testified as follows:</p> <p>19 THE REPORTER: Counsel, you may proceed.</p> <p>20 MR. HARVEY: Thank you.</p> <p>21 EXAMINATION BY COUNSEL FOR THE PLAINTIFF,</p> <p>22 JAMES DEPPOLETO</p> <p>23 BY MR. HARVEY:</p> <p>24 Q Good morning, Mr. Holley.</p> <p>25 A Good morning. How are you?</p>	<p>8</p> <p>1 Q And have you seen this document before,</p> <p>2 the subpoena to testify at deposition in a civil</p> <p>3 action --</p> <p>4 A Yes.</p> <p>5 Q -- to Takeover Industries, Incorporated?</p> <p>6 I'm sorry. Did you say yes?</p> <p>7 A Yes.</p> <p>8 Q Thank you. And I understand that you are</p> <p>9 prepared to offer testimony today as the corporate</p> <p>10 representative on behalf of Takeover Industries,</p> <p>11 Incorporated; is that correct?</p> <p>12 A Yes.</p> <p>13 Q And then if we scroll down -- and by the</p> <p>14 way, we'll make this Exhibit Number 1, please.</p> <p>15 MR. BENNION: Yes.</p> <p>16 (Exhibit 1 was marked for identification</p> <p>17 and is attached to the transcript.)</p> <p>18 Q And then if we scroll down, there's an</p> <p>19 Exhibit A, which has deposition topics in numbered</p> <p>20 paragraphs 1 through 5. Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And it's my understanding that you are</p> <p>23 here to testify today as to Topics 1, 2, 3, and 4,</p> <p>24 but not 5. Is that correct in your understanding?</p> <p>25 A Correct. Yes, correct.</p>

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<p>9</p> <p>1 Q Okay. Thank you. What, if anything, did</p> <p>2 you do to prepare to offer testimony as the</p> <p>3 corporate representative on behalf of Takeover</p> <p>4 with respect to those topics?</p> <p>5 A Just spoke with my attorney.</p> <p>6 Q Did you review any documents?</p> <p>7 THE REPORTER: I'm sorry. You cut out,</p> <p>8 your question.</p> <p>9 Q Did you review any documents?</p> <p>10 A No.</p> <p>11 Q Did you review any communications?</p> <p>12 A No.</p> <p>13 Q Did you ask anyone else affiliated with</p> <p>14 Takeover either now or in the past to provide you</p> <p>15 with information that would help you educate</p> <p>16 yourself on the topics list in the notice about</p> <p>17 which you're going to testify?</p> <p>18 A No.</p> <p>19 Q And you said you just spoke with your</p> <p>20 lawyer?</p> <p>21 A Correct.</p> <p>22 Q How long did you speak to your lawyer?</p> <p>23 A I don't know. Maybe a half hour.</p> <p>24 Q When was this?</p> <p>25 A Yesterday.</p>	<p>11</p> <p>1 James (inaudible), including the amounts received</p> <p>2 by Takeover from Mr. Deppoleto.</p> <p>3 Are we on the same page?</p> <p>4 A Yeah, you keep cutting out.</p> <p>5 Q I'm sorry. And let me know if that</p> <p>6 happens. I'll ask again.</p> <p>7 I'm going to go through these topics in</p> <p>8 order. The first topic is the nature of Takeover</p> <p>9 Industries, Incorporated's relationship with James</p> <p>10 V. Deppoleto, Jr., including the amounts of funds</p> <p>11 received by Takeover from Mr. Deppoleto.</p> <p>12 Are we on the same page?</p> <p>13 A Yes.</p> <p>14 Q Can you briefly describe what Takeover</p> <p>15 Industries, Incorporated, is?</p> <p>16 A Takeover Industries is a beverage company.</p> <p>17 Q And it is currently still in business?</p> <p>18 A It has no sales for the last year.</p> <p>19 Q But it is still an ongoing legal entity,</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q And it was founded by yourself, Mr. -- and</p> <p>23 Mr. McBride, correct?</p> <p>24 A Yes.</p> <p>25 Q And it sold products under the brand name</p>
<p>10</p> <p>1 Q Was anyone else at the meeting other than</p> <p>2 you and your lawyer?</p> <p>3 A No.</p> <p>4 Q And was this your current lawyer or your</p> <p>5 potentially former lawyer, Mr. Sexton or Mr. Bond?</p> <p>6 A Current.</p> <p>7 Q And I think I understood the answer before</p> <p>8 to be no to this, but I'm going to ask anyways.</p> <p>9 During that meeting, did you review any documents?</p> <p>10 A No.</p> <p>11 Q Other than that 30-minute meeting</p> <p>12 yesterday, did you have any other discussions with</p> <p>13 counsel about this deposition?</p> <p>14 A No.</p> <p>15 Q Did you make any handwritten notes to</p> <p>16 assist you in testifying here today?</p> <p>17 THE REPORTER: I'm sorry. Part of your</p> <p>18 question got cut out.</p> <p>19 Q Did you make any handwritten or</p> <p>20 typewritten notes to assist you?</p> <p>21 A No. No.</p> <p>22 Q Okay. I'm going to go through these</p> <p>23 topics in the order we've got them listed. So the</p> <p>24 first topic is the nature of Takeover Industries,</p> <p>25 Incorporated -- Incorporated's relationship with</p>	<p>12</p> <p>1 NXT LVL, N-X-T, space, L-V-L, correct?</p> <p>2 A Correct.</p> <p>3 Q And I know I asked you this before in your</p> <p>4 personal capacity, but now you're speaking on</p> <p>5 behalf of the company, so I want to ask you again.</p> <p>6 What products were sold under the brand name,</p> <p>7 NXT LVL?</p> <p>8 A Initially, it was a hydrogen water and</p> <p>9 energy shots.</p> <p>10 Q And the energy shots are also known as</p> <p>11 gamer shots; is that correct?</p> <p>12 A Correct.</p> <p>13 Q What were the name of the gamer shots?</p> <p>14 A NXT LVL Gamer Shot and a T-Pain Gamer</p> <p>15 Shot.</p> <p>16 Q And at the time that Mr. Deppoleto started</p> <p>17 doing business with Takeover, how many employees</p> <p>18 did Takeover have?</p> <p>19 A When you mean doing business, you mean the</p> <p>20 loans?</p> <p>21 Q Yes.</p> <p>22 A I wasn't there at that time, but I</p> <p>23 believe, from my knowledge, there was probably</p> <p>24 five or six employees.</p> <p>25 Q Who were those five or six employees?</p>

<p>13</p> <p>1 A Jason Tucker, Toby McBride, Joseph Pavlik, 2 Michael Tzanetatos, Michael Costello, and Kerby 3 Fortner and, I believe, Melissa Tucker. 4 Q Anyone else? 5 A No. 6 Q And you said you were not there at the 7 time. From when to when were you not at Takeover? 8 A When I was not at Takeover? From December 9 of '21 until November of '22. 10 Q And all of Mr. Deppoleto's loans to 11 Takeover occurred in that window when you were not 12 there, true? 13 A Yes. 14 Q So how did you come to the knowledge about 15 the details of the amount of funds received by 16 Takeover from Mr. Deppoleto? 17 A I've seen the documents and through the 18 court case. 19 Q Which court case? 20 A This one. 21 Q How did Takeover's relationship with 22 Mr. Deppoleto begin? 23 A I'm not sure. I wasn't there. 24 Q Who from Takeover had the initial contact 25 with Mr. Deppoleto?</p>	<p>15</p> <p>1 Q Why did Takeover solicit Mr. Deppoleto's 2 investment? 3 A I don't know. 4 Q In the initial conversation about 5 Mr. Deppoleto investing in Takeover, what amount 6 of funds did Takeover request Mr. Deppoleto to 7 loan to Takeover? 8 A That, I don't know either. 9 Q Before Mr. Deppoleto loaned Takeover the 10 initial amount of money, what did Takeover 11 represent to Mr. Deppoleto that the funds would be 12 used for? 13 A I don't know. 14 Q In preparation -- let me go back. 15 You said it was your belief, although you 16 weren't sure, that Mr. McBride or Mr. Pavlik had 17 the initial contact with Mr. Deppoleto as 18 representative of Takeover; is that correct? 19 A Correct. 20 Q And you're telling me that you did not 21 speak to either Mr. McBride or Mr. Pavlik in 22 preparation for this deposition; is that correct? 23 A Correct. 24 Q Why not? 25 A I don't believe that I needed to.</p>
<p>14</p> <p>1 A From my knowledge, I believe it's Toby or 2 Joe. 3 Q Toby McBride or Joe Pavlik? 4 A Correct. 5 Q When did Mr. Deppoleto's relationship 6 begin with Toby McBride and/or Joe Pavlik? 7 A I don't know exactly. 8 Q What was the nature of the relationship 9 between Mr. Deppoleto and Mr. McBride and/or 10 Mr. Pavlik? 11 A I don't know that either. 12 Q Who from Takeover first approached 13 Mr. Deppoleto about investing in Takeover? 14 A I don't know that. 15 Q When did Takeover first approach 16 Mr. Deppoleto about investing in Takeover? 17 A I don't know that either. 18 Q Do you know whether the first approach to 19 Mr. Deppoleto about investing in Takeover, was 20 that in person, via email? 21 A I don't know. I was not there. 22 Q What specifically did the Takeover 23 representative say to Mr. Deppoleto to solicit his 24 investment? 25 A I wouldn't know that either.</p>	<p>16</p> <p>1 Q Even though that you understood the topic 2 -- the first topic was the nature of Takeover 3 Industries, Incorporated's relationship with James 4 V. Deppoleto, Jr., including the amount of funds 5 received by Takeover from Mr. Deppoleto? 6 A Yeah. I've seen the documents. 7 Q But in terms of the relationship and how 8 it started, for example, you have no knowledge 9 whatsoever as you sit here today; is that true? 10 A Correct. 11 Q In May of 2022, who were the members of 12 Takeover's board of directors? 13 A I'm not sure, but I believe it was Jason 14 Tucker, Toby McBride, and Joseph Pavlik. 15 Q In May of 2022, who were the officers of 16 Takeover? 17 A I believe the same three. 18 Q I'm going to show you another document. 19 Are you able to see my screen? 20 A I am. 21 Q And we see from the bottom -- and we'll 22 make this Exhibit 2, by the way. 23 (Exhibit 2 was marked for identification 24 and is attached to the transcript.) 25 Q This one has an exhibit sticker on the</p>

<p>17</p> <p>1 bottom that says, Holley Exhibit 5, with a date of 2 October 4, 2024. Do you see that at the bottom 3 here? 4 A Yes. 5 Q So you've seen this document at least at 6 your deposition, your previous deposition, 7 correct? 8 A Yes. 9 Q And at the top, it says, convertible note 10 purchase agreement, correct? 11 A Uh-huh. Yes. 12 Q And so what is this document? What's your 13 understanding? 14 A It's a convertible note between 15 Mr. Deppoleto and Takeover Industries. 16 Q And the Takeover board of directors 17 discussed this note purchase agreement prior to 18 its execution, correct? 19 A I don't have knowledge of that. 20 Q So you can't say when or who specifically 21 from the Takeover board of directors discussed 22 this note purchase agreement prior to its 23 execution? Is that what you're telling me? 24 A Yes. 25 Q And you also don't know what they</p>	<p>19</p> <p>1 company, hereby promises to pay James V. 2 Deppoleto, Jr., the holder, the principal sum of 3 \$500,000 together with interest thereon from the 4 date of this convertible promissory note. 5 Interest will accrue at a rate of 8 percent 6 compounded annually, correct? 7 A Correct. 8 Q And Takeover received Mr. Deppoleto's 9 \$500,000 payment in accordance with this 10 promissory note, correct? 11 A Correct. 12 Q And Takeover promised to repay 13 Mr. Deppoleto his \$500,000 loan with 14 (indiscernible), correct? 15 A Correct. 16 Q Okay. We'll take that one down. We'll 17 mark -- I'm going to share this one with you, and 18 we'll mark this next one Exhibit Number 4. 19 (Exhibit 4 was marked for identification 20 and is attached to the transcript.) 21 Q And this one at the top says, joint 22 written consent of the board of directors and 23 shareholders of Takeover Industries, Inc., dated 24 May 20, '22, correct? 25 A Yes.</p>
<p>18</p> <p>1 discussed. Is that what you're telling me? 2 A Correct. 3 Q And the purpose of this document was to 4 memorialize Mr. Deppoleto's \$500,000 loan to 5 Takeover, correct? 6 A Yes. 7 Q We'll take that one down. I'll show you 8 another document. We'll mark this as Exhibit 3. 9 (Exhibit 3 was marked for identification 10 and is attached to the transcript.) 11 Q This one is labeled, secured convertible 12 promissory note, and it's dated May 25, 2022, 13 correct? 14 A Yes. Yes. 15 Q And in the top left, it also says, 16 500,000, correct? 17 A Yes. 18 Q Do you recognize this document? 19 A Yes. 20 Q What is it? 21 A It's a convertible promissory note between 22 Mr. Deppoleto and Takeover Industries. 23 Q And the first portion of the first full 24 paragraph says, for value received, Takeover 25 Industries, Inc., a Nevada corporation, the</p>	<p>20</p> <p>1 Q Do you recognize this document? 2 A Yes. 3 Q And what is it? 4 A It's a joint written consent of the board 5 of directors of Takeover. 6 Q And the purpose was to provide written 7 consent to both the board of directors and 8 shareholders of Takeover for Takeover to enter 9 into the loan agreement with Mr. Deppoleto, 10 correct? 11 A Yes, I think so. 12 Q Okay. And if we go down, there are some 13 resolutions. There's a resolution about halfway 14 down the page that starts off, further resolved 15 that the company's president be, and hereby is, 16 authorized and directed to do and perform or cause 17 to be done and perform all such acts, deeds, and 18 things and to make, execute -- and it goes on. 19 But essentially, what that paragraph is saying, 20 that Takeover's president, Jason Tucker, is 21 authorized to take all necessary actions to 22 effectuate Mr. Deppoleto's note purchase 23 agreement, correct? 24 A Correct. 25 Q And then if we go down, there's a</p>

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6 (21 to 24)

<p>21</p> <p>1 signature page. And under board of directors, 2 it's got Toby McBride, Jason Tucker, and Joseph 3 Pavlik, correct? 4 A Correct. 5 Q And under shareholders, we've got Michael 6 Costello, correct? 7 A I don't believe he was a shareholder, 8 though. 9 Q This document -- according to this 10 document, he's listed as a shareholder consenting 11 to this agreement, correct? 12 A Yeah. He owned no shares, though. 13 Q Okay. And this was during a time you were 14 not at the company, true? 15 A True. 16 Q Now, the board of directors, again, it's 17 got McBride, Tucker, and Pavlik. Were there any 18 other board of directors of Takeover as of this 19 May 20, 2022, document, other than those three? 20 A Technically, I was still a director, but 21 -- because they removed me improperly, but I was 22 not active during that time. 23 Q Okay. So this is all three active 24 directors of Takeover as of May 20, 2022, correct? 25 A Yes.</p>	<p>23</p> <p>1 Q So as of July 6, 2022, Mr. Deppoleto has 2 loaned Takeover a total of one million in 3 principal, correct? 4 A Correct. 5 Q Okay. We'll take that down. Next one 6 we'll show you is going to be Exhibit Number 6. 7 (Exhibit 6 was marked for identification 8 and is attached to the transcript.) 9 Q And this one is labeled, second secured 10 convertible promissory note, and it's dated July 11 6, 2022, correct? 12 A Correct. 13 Q Do you recognize this document? 14 A Yes. 15 Q What is it? 16 A It's a convertible note between Takeover 17 Industries and James Deppoleto. 18 Q A second secured convertible promissory 19 note, correct? 20 A Yes. 21 Q And Takeover received Mr. Deppoleto's 22 \$500,000 loan in accordance with this second 23 promissory note, correct? 24 A Yes. 25 Q And Takeover promised to repay</p>
<p>22</p> <p>1 Q Okay. We'll take that one down. I'll 2 show you another document here. We'll mark this 3 one as Exhibit Number 5. 4 (Exhibit 5 was marked for identification 5 and is attached to the transcript.) 6 Q At the top, this is labeled, first 7 amendment to convertible note purchase agreement, 8 correct? 9 A Correct. 10 Q And it's entered into as of July 6, 2022, 11 correct? 12 A Correct. 13 Q Do you recognize this document? 14 A Yes. 15 Q What is it? 16 A It's a convertible note purchase agreement 17 between Mr. Deppoleto and Takeover Industries. 18 Q And it's an amendment to the May 25, 2022, 19 convertible note purchase agreement we were just 20 talking about, correct? 21 A Yes. 22 Q And with this first amendment, 23 Mr. Deppoleto is loaning Takeover an additional 24 \$500,000, correct? 25 A Yes.</p>	<p>24</p> <p>1 Mr. Deppoleto his \$500,000 loan plus interest, 2 correct? 3 A Or converted to shares, yes. 4 Q What did Takeover intend to use 5 Mr. Deppoleto's second \$500,000 loan for? 6 A I don't know. I wasn't there. 7 Q Do you know whether the second \$500,000 8 loan was supposed to be used differently than the 9 first \$500,000 loan? 10 A No idea. 11 Q Okay. I'll show you another document now. 12 We'll mark this as Exhibit 7. 13 (Exhibit 7 was marked for identification 14 and is attached to the transcript.) 15 Q This one at the top is joint written 16 consent to the board of directors and shareholders 17 of Takeover Industries, Inc., and it's dated July 18 1, 2022, correct? 19 A Correct. 20 Q And do you recognize this document? 21 A Yes. 22 Q What is it? 23 A It's a joint written consent of the board 24 of directors and shareholders of Takeover 25 Industries.</p>

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<p>25</p> <p>1 Q And the purpose of this document is to</p> <p>2 provide written consent to the board of directors</p> <p>3 and shareholders of Takeover to enter into the</p> <p>4 second \$500,000 loan with Mr. Deppoleto, correct?</p> <p>5 A Correct.</p> <p>6 Q If we go down, at the bottom of page 1,</p> <p>7 there's another paragraph that starts off similar</p> <p>8 to the one we were just talking about, further</p> <p>9 resolved, comma, that the company's president be,</p> <p>10 comma, and hereby is, and then it goes on. And</p> <p>11 essentially what that paragraph is telling us is</p> <p>12 that Takeover's president, Jason Tucker, was</p> <p>13 authorized to take all necessary actions to effect</p> <p>14 Mr. Deppoleto's first amendment to the note</p> <p>15 purchase agreement, correct?</p> <p>16 A Correct.</p> <p>17 Q If we go down, we've got another signature</p> <p>18 page at the bottom. And under the board of</p> <p>19 directors, we've got listed Toby McBride, Jason</p> <p>20 Tucker, and Joseph Pavlik, correct?</p> <p>21 A Correct.</p> <p>22 Q And under shareholders, it lists Michael</p> <p>23 Costello, correct?</p> <p>24 A Correct.</p> <p>25 Q So all of them consented to the second</p>	<p>27</p> <p>1 convertible note purchase agreement dated May 25,</p> <p>2 2022, correct?</p> <p>3 A Correct.</p> <p>4 Q And with this second amendment,</p> <p>5 Mr. Deppoleto is loaning Takeover an additional</p> <p>6 \$500,000, correct?</p> <p>7 A Correct.</p> <p>8 Q So as of August 19, 2022, Mr. Deppoleto</p> <p>9 has loaned Takeover a total of \$1.5 million in</p> <p>10 principal, correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. We'll take that one down. Okay.</p> <p>13 The next one I'm going to show you we're going to</p> <p>14 mark Exhibit Number 9.</p> <p>15 (Exhibit 9 was marked for identification</p> <p>16 and is attached to the transcript.)</p> <p>17 Q And this is labeled, third secured</p> <p>18 convertible promissory note, dated August 19,</p> <p>19 2022, correct?</p> <p>20 A Correct.</p> <p>21 Q Do you recognize this document?</p> <p>22 A Yes.</p> <p>23 Q What is it?</p> <p>24 A It is a third secured convertible</p> <p>25 promissory note between Takeover and James</p>
<p>26</p> <p>1 \$500,000 loan, correct?</p> <p>2 A Yeah. Once again, Michael Costello was</p> <p>3 not a shareholder.</p> <p>4 Q And as of July 1, 2022, there were no</p> <p>5 other active directors, other than the three</p> <p>6 listed in this document, being Mr. McBride,</p> <p>7 Mr. Tucker, and Mr. Pavlik, correct?</p> <p>8 A Correct.</p> <p>9 Q Okay. We'll take that one down. Next</p> <p>10 document we'll show you we're going to mark as</p> <p>11 Exhibit Number 8.</p> <p>12 (Exhibit 8 was marked for identification</p> <p>13 and is attached to the transcript.)</p> <p>14 Q And this one is labeled, second amendment</p> <p>15 to convertible note purchase agreement, correct?</p> <p>16 A Correct.</p> <p>17 Q And it was entered into as of August 19,</p> <p>18 2022, correct?</p> <p>19 A Correct.</p> <p>20 Q Do you recognize this document?</p> <p>21 A Yes.</p> <p>22 Q What is it?</p> <p>23 A It's a second amendment to the convertible</p> <p>24 note purchase agreement.</p> <p>25 Q And this document amends the initial</p>	<p>28</p> <p>1 Deppoleto.</p> <p>2 THE REPORTER: I'm sorry. The end of your</p> <p>3 answer is kind of trailing off. It was hard to</p> <p>4 hear.</p> <p>5 A Convertible note between Takeover</p> <p>6 Industries and James Deppoleto.</p> <p>7 THE REPORTER: Thank you.</p> <p>8 Q And Takeover received Mr. Deppoleto's</p> <p>9 \$500,000 loan in accordance with this third</p> <p>10 promissory note, correct?</p> <p>11 A Correct.</p> <p>12 Q Takeover promised to repay Mr. Deppoleto</p> <p>13 his \$500,000 loan, correct?</p> <p>14 A Or convert into shares, yes.</p> <p>15 Q What did Takeover intend to use</p> <p>16 Mr. Deppoleto's third \$500,000 for?</p> <p>17 A I don't know.</p> <p>18 Q Do you know whether it was for a use that</p> <p>19 was different than the use to which the first and</p> <p>20 second \$500,000 loans were for?</p> <p>21 A I don't know that.</p> <p>22 Q Okay. We'll take that one down. Next one</p> <p>23 we're going to show you we'll mark as</p> <p>24 Exhibit Number 10.</p> <p>25 (Exhibit 10 was marked for identification</p>

<p>29</p> <p>1 and is attached to the transcript.) 2 Q And Exhibit Number 10 is labeled, joint 3 written consent of the board of -- I'm sorry. 4 Joint written consent of the board of directors 5 and shareholders of Takeover Industries, Inc., and 6 it's dated August 20 -- or August 18, 2022, 7 correct? 8 A Correct. 9 Q Do you recognize this document? 10 A Yes. 11 Q What is it? 12 A It's a written consent of the board of 13 directors and shareholders of Takeover Industries. 14 Q And the purpose was to provide a joint 15 written consent of the board of directors and 16 shareholders for Takeover to be able to enter into 17 the third loan from Mr. Deppoleto, correct? 18 A Correct. 19 Q And if we go down, we've got at the bottom 20 of page 1 another paragraph that, again, like the 21 other paragraphs that we were talking about, 22 authorizes Takeover's president, Jason Tucker, to 23 take all necessary actions to effect 24 Mr. Deppoleto's second amendment to note purchase 25 agreement, correct?</p>	<p>31</p> <p>1 Takeover \$386,000 and change in October 2022; is 2 that correct? 3 A Correct. 4 Q And you also don't -- well, let me ask you 5 this: Who from Takeover negotiated with 6 Mr. Deppoleto in October 2022 about a supplemental 7 loan? 8 A There was no documentation, so I don't 9 know. 10 Q And you didn't speak to any current or 11 former Takeover employees, officers, or directors 12 about this supplemental loan in preparation for 13 your deposition; is that correct? 14 A Correct. 15 Q Are you taking the position that Takeover 16 did not receive \$386,000 and change from 17 Mr. Deppoleto in October 2022? 18 A Correct. 19 Q I'm not sure if we had a double-negative 20 there. Maybe that was my fault. 21 A Sorry. No. 22 Q Did Takeover -- 23 A No money was received from Mr. Deppoleto 24 in that amount. 25 Q And I'm sorry. We were talking over each</p>
<p>30</p> <p>1 A Correct. 2 Q And then if we go down, there's a 3 signature page, and on the signature page, we've 4 got board of directors, Toby McBride, Jason 5 Tucker, and Joseph Pavlik, correct? 6 A Correct. 7 Q And then under shareholders, it lists 8 Michael Costello, correct? 9 A Correct. 10 Q As of the date, August 18, 2022, are there 11 any board of directors other than -- active board 12 of directors other than Mr. McBride, Mr. Tucker, 13 and Mr. Pavlik? 14 A No. 15 Q Take that one down. 16 Mr. Deppoleto also loaned Takeover 17 \$386,773.86 in October 2022, correct? 18 A I've seen no loan documents for it. 19 Q Are you taking the position that 20 Mr. Deppoleto did not loan Takeover \$386,773.86 in 21 October 2022, whether there were loan documents or 22 not? 23 A I don't know. I wasn't there. 24 Q So as you sit here today, you can't say 25 one way or another whether Mr. Deppoleto loaned</p>	<p>32</p> <p>1 other. What did you just say? 2 A There was no money received by Takeover in 3 that amount. 4 Q Okay. So I want to make sure I 5 understand. You're telling me that Takeover did 6 not receive \$386,000, or even a number close to 7 that, from Mr. Deppoleto in October 2022? Is that 8 what you're telling me? 9 A Correct. 10 Q And what are you basing that statement off 11 of? 12 A Bank statements. 13 Q What bank statements? 14 A Takeover Industries' bank statements. 15 Q When did you review those? 16 A I don't know. Last year. 17 Q You didn't review them in preparation for 18 today? 19 A No. 20 Q And if the bank statements show that there 21 was, in fact, a loan of \$386,000 and change from 22 Mr. Deppoleto in October 2022, you wouldn't 23 dispute those bank statements, would you? 24 A No. 25 Q And so you're basing that answer solely on</p>

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<p>33</p> <p>1 your personal review of the bank statements last</p> <p>2 year, correct?</p> <p>3 A Correct.</p> <p>4 Q And if the bank statements show that there</p> <p>5 was a payment from Mr. Deppoleto to Takeover in</p> <p>6 that time frame, do you know why there was not</p> <p>7 another amendment to the convertible note purchase</p> <p>8 agreement to facilitate that loan?</p> <p>9 MR. BENNION: Objection to the extent it</p> <p>10 may call for speculation.</p> <p>11 Go ahead.</p> <p>12 A I don't know. I wasn't there.</p> <p>13 Q And as the corporate representative for</p> <p>14 Takeover, you're not in a position to say whether</p> <p>15 there was even a discussion about entering into</p> <p>16 another written amendment to amend the convertible</p> <p>17 note purchase agreement; is that what you're</p> <p>18 telling me?</p> <p>19 A One more time. I'm sorry.</p> <p>20 Q Sure. You're here as the corporate</p> <p>21 representative for Takeover Industries, correct?</p> <p>22 A Yes.</p> <p>23 Q And the first topic to discuss were -- was</p> <p>24 the various loans that Mr. Deppoleto provided to</p> <p>25 Takeover. You understand that, correct?</p>	<p>35</p> <p>1 Q Correct.</p> <p>2 A I've seen no proof of it.</p> <p>3 Q And when I was asking you those questions</p> <p>4 earlier, I thought you told me, but correct me if</p> <p>5 I'm wrong, part of the reason you didn't know why</p> <p>6 there was no loan document was because you weren't</p> <p>7 there at the time, correct?</p> <p>8 A I don't know of any discussions about any</p> <p>9 of it. So --</p> <p>10 Q And I understand that if this was your</p> <p>11 deposition a couple weeks ago when I was asking</p> <p>12 you questions in your personal capacity. Now I'm</p> <p>13 asking you as the corporate representative of</p> <p>14 Takeover, who is here to testify today about the</p> <p>15 various loans and allegations about the loans and</p> <p>16 whatnot. You don't -- you can't answer why there</p> <p>17 wasn't a fourth note if there was, in fact, a</p> <p>18 loan. Is that what you're telling me?</p> <p>19 A I don't believe that there was.</p> <p>20 Q And do you know why there was not?</p> <p>21 A No.</p> <p>22 Q And you didn't -- who was there at the</p> <p>23 time? I know you said you were out. Who was at</p> <p>24 Takeover in October 2022?</p> <p>25 A Jason Tucker.</p>
<p>34</p> <p>1 A Yes.</p> <p>2 Q And what I'm asking you is, as the</p> <p>3 corporate representative of Takeover, whether you</p> <p>4 were personally working there at the time of</p> <p>5 October 2022 or not, in your capacity as the</p> <p>6 corporate representative for Takeover, you're not</p> <p>7 in a position to tell me why there wasn't a fourth</p> <p>8 note entered into. Is that what you're telling</p> <p>9 me?</p> <p>10 MR. BENNION: Objection, vague and</p> <p>11 ambiguous.</p> <p>12 Go ahead.</p> <p>13 A Yeah, I don't -- I don't understand. I</p> <p>14 don't -- like, there's -- what are you asking me</p> <p>15 directly?</p> <p>16 Q Sure. Happy to try and come at it a</p> <p>17 different way. I was asking you a series of</p> <p>18 questions about -- well, let me back up.</p> <p>19 You understand that Mr. Deppoleto is</p> <p>20 alleging that he provided an additional loan in</p> <p>21 October 2022 for about \$386,000. You understand</p> <p>22 that, correct?</p> <p>23 A Yeah. And I said, I have never seen any</p> <p>24 loan documents or any amount of that deposited</p> <p>25 into Takeover's accounts.</p>	<p>36</p> <p>1 Q Did you speak to Mr. Tucker about the</p> <p>2 allegations --</p> <p>3 A No.</p> <p>4 Q -- of the October 2022 loan?</p> <p>5 A No.</p> <p>6 Q Did you speak -- well, was Mr. Pavlik</p> <p>7 there in October 2022?</p> <p>8 A Yes.</p> <p>9 Q Did you speak to Mr. Pavlik about the</p> <p>10 allegations about the October 2022 loan?</p> <p>11 A No.</p> <p>12 Q Was Mr. McBride there in October 2022?</p> <p>13 A I'm not sure.</p> <p>14 Q Did you speak to Mr. McBride about the</p> <p>15 allegations about the October 2022 loan?</p> <p>16 A No.</p> <p>17 Q Was Mr. Costello at Takeover in October</p> <p>18 2022?</p> <p>19 A I believe so, yes.</p> <p>20 Q Did you speak to Mr. Costello about the</p> <p>21 allegations about the October 2022 loan?</p> <p>22 A No.</p> <p>23 Q Did you review Mr. Deppoleto's document</p> <p>24 production in preparation for the corporate</p> <p>25 representative deposition today?</p>

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<p>37</p> <p>1 A I don't believe he produced any documents.</p> <p>2 Q So the answer to my question is, you did</p> <p>3 not review any documents from Mr. Deppoleto in</p> <p>4 preparation for your answer today?</p> <p>5 A Is that the same thing you just asked me?</p> <p>6 Q Yes. I asked it slightly differently</p> <p>7 because I got the sense you didn't understand when</p> <p>8 I asked the first time. I'm happy to ask it again</p> <p>9 if you're still not understanding. Just let me</p> <p>10 know.</p> <p>11 A So did you ask me if he produced any</p> <p>12 documents?</p> <p>13 Q No. I'll ask -- I'll ask it again.</p> <p>14 In preparation for your deposition today,</p> <p>15 you didn't review anything that Mr. Deppoleto</p> <p>16 produced in this case; is that correct?</p> <p>17 A No.</p> <p>18 Q What's incorrect about it?</p> <p>19 A He hasn't produced any documents.</p> <p>20 Q Your testimony is that Mr. Deppoleto</p> <p>21 hasn't produced any documents in this case?</p> <p>22 A Not that we've asked for.</p> <p>23 Q Okay. You were not -- strike that.</p> <p>24 Were you personally involved in any</p> <p>25 discussions with Mr. Deppoleto in October 2022</p>	<p>39</p> <p>1 Mr. Deppoleto in October 2022, if Mr. Deppoleto</p> <p>2 testifies that he was told by someone from</p> <p>3 Takeover that he would be repaid, you're not in a</p> <p>4 position to contradict his testimony, true?</p> <p>5 MR. BENNION: Objection to the extent it</p> <p>6 may call for a legal conclusion.</p> <p>7 Go ahead.</p> <p>8 A I don't know. I'm not an attorney.</p> <p>9 Q Well, you said you didn't have any</p> <p>10 discussions directly with Mr. Deppoleto in October</p> <p>11 2022, correct?</p> <p>12 A Correct.</p> <p>13 Q And you don't know -- I think you told me</p> <p>14 you don't know whether anyone from Takeover had</p> <p>15 any discussions with Mr. Deppoleto in 2022,</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q Okay. And so what I'm asking you is, if</p> <p>19 Mr. Deppoleto testifies, I did speak to someone</p> <p>20 from Takeover in October 2022, you don't have any</p> <p>21 personal knowledge to contradict that, correct?</p> <p>22 A I don't.</p> <p>23 Q Okay. And similarly, if Mr. Deppoleto</p> <p>24 testifies that someone from Takeover promised to</p> <p>25 repay him in October 2022, you don't have any</p>
<p>38</p> <p>1 about loans or potential loans?</p> <p>2 A No.</p> <p>3 Q Do you know whether anyone from Takeover</p> <p>4 spoke to Mr. Deppoleto in or around October 2220</p> <p>5 about loans or potential loans?</p> <p>6 A No.</p> <p>7 Q Did Takeover tell Mr. Deppoleto it would</p> <p>8 repay him any October 2022 loan that he might</p> <p>9 make?</p> <p>10 A No.</p> <p>11 Q And what's your basis for saying that?</p> <p>12 A I don't know.</p> <p>13 Q So Takeover could have told Mr. Deppoleto</p> <p>14 that they would repay him any loan that he might</p> <p>15 make around October 2022, but you can't say one</p> <p>16 way or another?</p> <p>17 A I have no idea.</p> <p>18 Q And so because you have no idea, if</p> <p>19 Mr. Deppoleto says that he was told by a Takeover</p> <p>20 representative that he would be repaid, you're not</p> <p>21 in a position to personally contradict him,</p> <p>22 correct?</p> <p>23 A I told you, I don't know.</p> <p>24 Q Right. And that's my point. Since you</p> <p>25 weren't involved in any discussions with</p>	<p>40</p> <p>1 personal knowledge to contradict Mr. Deppoleto's</p> <p>2 testimony, correct?</p> <p>3 A No, I don't.</p> <p>4 Q Mr. Deppoleto also loaned Takeover</p> <p>5 \$128,924.62 in November 2022, correct?</p> <p>6 A Not that I know of.</p> <p>7 Q Did you speak to anyone who is currently</p> <p>8 at Takeover or was formerly with Takeover about</p> <p>9 whether, in fact, Mr. Deppoleto loaned Takeover</p> <p>10 over \$128,000 in November 2022?</p> <p>11 A No.</p> <p>12 Q And does your answer span going back to</p> <p>13 November 2022 up through today, or would that just</p> <p>14 be in preparation for your deposition? In other</p> <p>15 words, when you got the topic list for today and</p> <p>16 made the determination you were going to be the</p> <p>17 corporate representative for Topic Number 1, did</p> <p>18 you reach out to anyone and ask whether</p> <p>19 Mr. Deppoleto's allegation about loaning Takeover</p> <p>20 over \$128,000 in November 2022 was correct?</p> <p>21 A I don't remember.</p> <p>22 Q Well, let me ask it this way: When is the</p> <p>23 last time you spoke to Mr. Tucker?</p> <p>24 A About two years ago.</p> <p>25 Q And you didn't have the topic list two</p>

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<p>41</p> <p>1 years ago, so fair to assume you haven't talked to 2 Mr. Tucker about the topic list, true? 3 A Correct. 4 Q Have you spoken to Mr. McBride since you 5 received the topic list about Topic Number 1? 6 A No. 7 Q Have you spoken to Mr. Pavlik since you 8 received the topic list about Topic Number 1? 9 A No. 10 Q Have you spoken to Mr. Costello since you 11 received the topic list about Topic Number 1? 12 A No. 13 Q And you don't know one way or another 14 whether Mr. Deppoleto loaned Takeover 15 \$128,000-plus in November 2022, correct? 16 A It was not in the bank statements, and 17 I've seen no loan documents. 18 Q And the last time you reviewed the bank 19 statements was about a year ago, you said? 20 A Possibly, yeah. 21 Q You didn't review the bank statements in 22 preparation for your deposition today, correct? 23 A Correct. 24 Q And if the bank statements show that 25 Mr. Deppoleto did, in fact, loan Takeover over</p>	<p>43</p> <p>1 your deposition as the corporate representative of 2 Takeover today, correct? 3 A I'm sorry. What was that again? 4 Q In preparation to speak as the corporate 5 representative for Takeover as to Topic Number 1 6 today, you didn't learn any information about a 7 potential loan from Mr. Deppoleto to Takeover in 8 November 2022, correct? 9 A Correct. 10 Q Did you do anything to specifically look 11 into whether Mr. Deppoleto's allegations about the 12 November 2022 loan were correct in preparation for 13 your deposition today? 14 A Not for the deposition, no. 15 Q After November 2022, did Takeover seek any 16 additional funding from Mr. Deppoleto? 17 A No. 18 Q Why not? 19 A No idea. 20 Q You were back with the company around 21 November 2022, correct? 22 A Correct. 23 Q You never had any discussions with anyone 24 at Takeover about seeking additional funding from 25 Mr. Deppoleto after November 2022?</p>
<p>42</p> <p>1 128,000 in November 2022, you would defer to the 2 bank statements, correct? 3 A Yes. 4 Q And you said you didn't see any loan 5 documents related to the November 2022 loan, 6 correct? 7 A Correct. 8 Q Do you know why there was no -- why there 9 were no loan documents related to the November 10 2022 loan? 11 A I haven't -- I don't know. There's no 12 proof. 13 Q Because you weren't personally involved in 14 the discussions with Mr. Deppoleto at that time; 15 is that true? 16 A True. 17 Q And because you weren't involved in 18 discussions with Mr. Deppoleto at that time, you 19 have no personal knowledge as to what anyone from 20 Takeover may have said to Mr. Deppoleto in 21 November 2022 about a supplemental loan; is that 22 correct? 23 A Correct. 24 Q And you also did not learn anything about 25 a potential November 2022 loan in preparation for</p>	<p>44</p> <p>1 A No. We didn't. 2 Q How did Takeover book Mr. Deppoleto's 3 loans to Takeover? 4 MR. BENNION: Same objection, vague and 5 ambiguous. Lacks foundation. 6 Go ahead. 7 A In what way? 8 Q You're familiar with the phrase, booking, 9 for instance, liabilities, assets, things of that 10 nature? Are you familiar with that? 11 A Yes. 12 Q How did Takeover book Mr. Deppoleto's 13 loans to the company? 14 MR. BENNION: Same objection. 15 A I wasn't directly involved with it. 16 Q Who was? 17 A I don't know. 18 Q Did Takeover have a CFO or a similar 19 position? 20 A No. 21 Q Who did Takeover use for its accounting 22 functions? 23 A I believe it was QuickBooks. 24 Q And who would have actually input the raw 25 data into QuickBooks for Takeover?</p>

<p>45</p> <p>1 A I'm not sure, but probably Jason Tucker.</p> <p>2 Q Okay. Did you review Takeover's books in</p> <p>3 preparation for your deposition today?</p> <p>4 A No.</p> <p>5 Q Do you know whether Takeover's books</p> <p>6 reflect all of the loans that you did see the loan</p> <p>7 paperwork for?</p> <p>8 A Yes.</p> <p>9 MR. BENNION: I'm going to state a belated</p> <p>10 objection. Lacks foundation.</p> <p>11 Q Do you know whether Takeover's books</p> <p>12 reflect the October 2022 and November 2022 loans</p> <p>13 for which there were not loan documents?</p> <p>14 A No.</p> <p>15 Q You don't know one way or another?</p> <p>16 A No. They weren't documented.</p> <p>17 Q And when was the last time you reviewed</p> <p>18 Takeover's books?</p> <p>19 A I don't know. A few months ago.</p> <p>20 Q In preparation for your deposition</p> <p>21 today --</p> <p>22 A No.</p> <p>23 Q -- or for some other reason?</p> <p>24 A Some other reason.</p> <p>25 Q And if Takeover's books reflect the</p>	<p>47</p> <p>1 of Takeover, are you taking the position that</p> <p>2 Takeover's books were improperly kept or</p> <p>3 fraudulent?</p> <p>4 A They could have. I'm not sure.</p> <p>5 MR. BENNION: I'm going to state a</p> <p>6 belated --</p> <p>7 Q What position --</p> <p>8 MR. BENNION: I'm going to state a belated</p> <p>9 objection. Calls for a legal conclusion.</p> <p>10 Q What position did you hold at Takeover</p> <p>11 before you were let go initially?</p> <p>12 A Director, COO.</p> <p>13 Q And when you came back to the company,</p> <p>14 what position did you hold?</p> <p>15 A Director.</p> <p>16 Q Did the director sign off on the accuracy</p> <p>17 of Takeover's books?</p> <p>18 MR. BENNION: Objection, vague and</p> <p>19 ambiguous.</p> <p>20 A I don't know. I wasn't there.</p> <p>21 Q At the time you were there.</p> <p>22 A When I was there?</p> <p>23 Q Yes.</p> <p>24 A Yes.</p> <p>25 Q Would you have signed off if you thought</p>
<p>46</p> <p>1 October 2022 and November 2022 loans, you would</p> <p>2 defer to the books, correct?</p> <p>3 A I still haven't seen any loan documents or</p> <p>4 anything for it, and the money was never received.</p> <p>5 Q My question was slightly different. If</p> <p>6 Takeover's books actually reflect the October 2022</p> <p>7 and November 2022 loans from Mr. Deppoleto, as</p> <p>8 between your memory and Takeover's books, in terms</p> <p>9 of which is more accurate, you would defer to</p> <p>10 Takeover's books, correct?</p> <p>11 MR. BENNION: Objection, lacks foundation,</p> <p>12 vague and ambiguous.</p> <p>13 Go ahead.</p> <p>14 A No.</p> <p>15 Q Why would you rely on your memory over</p> <p>16 Takeover's books?</p> <p>17 A I haven't seen any loan documents. Have</p> <p>18 you seen any?</p> <p>19 Q That's not how this works.</p> <p>20 Why would you rely on your memory over</p> <p>21 Takeover's books?</p> <p>22 A Why would I?</p> <p>23 Q Yes.</p> <p>24 A I don't know how to answer that.</p> <p>25 Q Are you -- as the corporate representative</p>	<p>48</p> <p>1 the books were inaccurate?</p> <p>2 MR. BENNION: Objection, vague and</p> <p>3 ambiguous.</p> <p>4 A I don't -- I'm not sure.</p> <p>5 Q You wouldn't have knowingly signed off on</p> <p>6 books that you believed were inaccurate; would</p> <p>7 you?</p> <p>8 A I don't know.</p> <p>9 Q Did Takeover ever share its book or books</p> <p>10 with investors in order to secure investments?</p> <p>11 A I don't know.</p> <p>12 Q Could have happened; you just don't know</p> <p>13 one way or another?</p> <p>14 A I don't know.</p> <p>15 Q Did Takeover share its books with</p> <p>16 Mr. Deppoleto before he made any of the loans?</p> <p>17 A I don't know that either.</p> <p>18 Q And when I asked you earlier about whether</p> <p>19 you were taking the position that Takeover's books</p> <p>20 were inaccurate, you said you didn't know. Do you</p> <p>21 remember answering that way a couple minutes ago?</p> <p>22 I'm giving you context for my next question.</p> <p>23 A Yes.</p> <p>24 Q Do you have any affirmative evidence or</p> <p>25 proof that Takeover's books were not accurate?</p>

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<p>49</p> <p>1 MR. BENNION: Objection, may call for a</p> <p>2 legal conclusion.</p> <p>3 Go ahead and answer.</p> <p>4 A I'm not sure.</p> <p>5 Q So when you said before that they may have</p> <p>6 -- that the books may have been inaccurate, you're</p> <p>7 speculating. You don't have any personal</p> <p>8 knowledge or proof that they were inaccurate,</p> <p>9 correct?</p> <p>10 A I don't.</p> <p>11 Q Okay. That ends Topic Number 1. Now</p> <p>12 we're going to switch over to Topic Number 2,</p> <p>13 which was each and every method that Takeover</p> <p>14 utilized the funds received from Mr. Deppoleto.</p> <p>15 Okay. Mr. Deppoleto's first loan</p> <p>16 installment to Takeover was for \$500,000 in May</p> <p>17 2022, correct?</p> <p>18 A Yes.</p> <p>19 Q When did Takeover begin spending funds</p> <p>20 received from Mr. Deppoleto's first loan</p> <p>21 installment?</p> <p>22 A I don't know.</p> <p>23 Q What did you do in preparation for your</p> <p>24 deposition as the corporate representative on</p> <p>25 Topic 2 to prepare for it?</p>	<p>51</p> <p>1 Q Do you know when that \$500,000 was used?</p> <p>2 A No.</p> <p>3 Q When did Takeover fully deplete the first</p> <p>4 \$500,000 that Mr. Deppoleto loaned to Takeover?</p> <p>5 A I don't know.</p> <p>6 Q I'm going to mark another exhibit here and</p> <p>7 show it to you. We'll mark this as Exhibit 11.</p> <p>8 (Exhibit 11 was marked for identification</p> <p>9 and is attached to the transcript.)</p> <p>10 Q And at the top, it says, your checking</p> <p>11 account, then it says, Takeover Industries. It's</p> <p>12 got an account number, and it says, May 1, 2022,</p> <p>13 to May 31, 2022. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Excuse me. If we go down a little bit,</p> <p>16 there's a number of entries. First one I want to</p> <p>17 ask you about is one on May 25th, which is near</p> <p>18 the bottom of page 5 of 12. And it's</p> <p>19 Bates-labeled DEF 00088. And going forward, to be</p> <p>20 a little more efficient today, when I talk about</p> <p>21 Bates labels, I'm just going to say DEF 88 instead</p> <p>22 of reading out all the zeroes. Is that okay?</p> <p>23 MR. BENNION: Sure. Yes.</p> <p>24 Q Okay. So then the first one I want to ask</p> <p>25 you about, at DEF 88, there's a payment from</p>
<p>50</p> <p>1 A Spoke to my attorney.</p> <p>2 Q Did you review any of Takeover's books and</p> <p>3 records that showed, for example, Takeover's</p> <p>4 payments made in the May 2022 time frame?</p> <p>5 A I have some knowledge of that after</p> <p>6 looking at bank statements.</p> <p>7 Q When did you look at bank statements?</p> <p>8 A Around six months ago.</p> <p>9 Q So not in preparation for this deposition,</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q The first \$500,000 that Mr. Deppoleto</p> <p>13 loaned to Takeover in May 2022, what did Takeover</p> <p>14 use those funds for?</p> <p>15 A It looked like production.</p> <p>16 Q And when you say, looked like production,</p> <p>17 can you elaborate on that? What do you mean by</p> <p>18 looked like and production? Start with the looked</p> <p>19 like. Where are you -- when you say, looked like,</p> <p>20 what looked like? What were you looking at</p> <p>21 specifically?</p> <p>22 A I saw payments made to manufacturing</p> <p>23 companies.</p> <p>24 Q What were the manufacturing companies?</p> <p>25 A I don't remember the names specifically.</p>	<p>52</p> <p>1 Takeover to NVE, Inc.</p> <p>2 A Yes.</p> <p>3 Q And it is for \$206,263.20, correct?</p> <p>4 A Correct.</p> <p>5 Q So the payment went from Takeover to NVE,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q What is NVE, Inc.?</p> <p>9 A It is a beverage manufacturer.</p> <p>10 Q And why would Takeover have been paying</p> <p>11 NVE over \$206,000 on May 25, 2022?</p> <p>12 A I believe they made the gamer shots.</p> <p>13 Q And when you say, they made the gamer</p> <p>14 shots, what do you mean by that specifically?</p> <p>15 A Manufactured them.</p> <p>16 Q What did -- well, can you describe the</p> <p>17 relationship between NVE and Takeover in a little</p> <p>18 more detail? In other words, what -- what did</p> <p>19 Takeover provide to NVE in order to allow NVE to</p> <p>20 make the gamer shots, as you said?</p> <p>21 A What did they provide? Like, they gave</p> <p>22 them money to make -- make the energy drinks, the</p> <p>23 energy shots for them.</p> <p>24 Q Did Takeover send a recipe? I don't know</p> <p>25 if that's the right term in the industry, but did</p>

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<p>53</p> <p>1 they provide a list of ingredients and a recipe 2 for NVE to then take those ingredients and then 3 convert them into the ultimate gamer shot? Or how 4 did that work? That's what I'm getting at. 5 A Yeah. Something like that, I believe. 6 Q Did Takeover provide the raw products for 7 NVE, and then NVE just assembled them? Or how did 8 that work? 9 A I believe it was all-encompassing, that 10 they would provide all the ingredients, all that, 11 then they would bottle it, manufacture it, label 12 it, package it. 13 Q So Takeover -- essentially, Takeover would 14 contact NVE and say, we'd like you to make gamer 15 shots. Here's the recipe. NVE, you take it from 16 here. NVE would do everything and then deliver 17 back to Takeover the finished product? Is that 18 basically what happened? 19 A Yes. 20 Q Where is NVE, Inc., based out of? 21 A I think New Jersey. 22 Q I think I asked you this before, but I 23 want to ask it just to make sure. So why did 24 Takeover pay NVE over \$206,000 just a few days 25 after Mr. Deppoleto's first investment?</p>	<p>55</p> <p>1 Tucker. 2 Q Okay. If we go back up to DEF 88, the 3 second-to-last transaction on that page is May 25, 4 2022. It's Takeover paying Faith Springs, LLC. 5 Do you see that? 6 A Yes. 7 Q What is Faith Springs, LLC? 8 A Another beverage manufacturer. 9 Q I'm sorry. Another what? 10 A Beverage manufacturer. 11 Q What beverages -- beverage or beverages 12 did Faith Springs manufacture for Takeover? 13 A Hydrogen water. 14 Q Was it the same process as it was with NVE 15 in terms of Takeover would give Faith Springs the 16 recipe, and then Faith Springs would do everything 17 else and deliver the hydrogen water to Takeover in 18 a finished can or whatever it was in? 19 A Yes. Very similar. 20 Q Okay. And this payment was for \$18,144, 21 correct? 22 A Correct. 23 Q Why did Takeover pay Faith Springs over 24 \$18,000 a few days after Mr. Deppoleto's 25 investment?</p>
<p>54</p> <p>1 A It appears to be for them to manufacture 2 product for them. 3 Q Would Takeover have been able to make that 4 payment to NVE without Mr. Deppoleto's \$500,000 5 loan? 6 A I don't know. 7 Q Then if we go down a little further in 8 this same document, this statement is June 1, 9 2022, through June 30, 2022, correct? 10 A Correct. 11 Q Go to June 15. You see there's another 12 payment to NVE on June 15, 2022, and this one is 13 for a little over \$93,000, correct? 14 A Correct. 15 Q And that's on DEF 104. What was the 16 purpose of Takeover's payment to NVE on June 15, 17 2022? 18 A I would assume it's for the same thing, 19 manufacturing of energy shots. 20 Q You're assuming. You don't actually know, 21 though? 22 A I don't know specifically what it was for. 23 Q Who from Takeover was responsible for the 24 interaction, communications with NVE? 25 A I don't know. I would assume Jason</p>	<p>56</p> <p>1 A I don't know exactly. 2 Q You don't know the purpose of that 3 payment? 4 A No. 5 Q Do you know whether Takeover needed 6 Mr. Deppoleto's initial \$500,000 loan in order to 7 pay Faith Springs on May 25, 2022? 8 A I don't know that. 9 Q Okay. Then if we go down, this one is 10 DEF 89. There's an entry on May 31, 2022, and it 11 lists an LA Libations, correct? 12 A Correct. 13 Q What is LA Libations? 14 A They are a beverage broker. 15 Q What is a beverage broker? 16 A You pay them, and they help you get 17 distribution. 18 Q Why did Takeover pay LA Libations \$30,000 19 a few days after Mr. Deppoleto's initial \$500,000 20 loan? 21 A I don't know exactly. 22 Q Did Takeover need Mr. Deppoleto's payment 23 in order to pay LA Libations on May 31, 2022? 24 A I don't know that either. 25 Q I'm sorry. I didn't hear your answer.</p>

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<p>57</p> <p>1 A I don't know.</p> <p>2 Q Who is John Abraham?</p> <p>3 A I don't know.</p> <p>4 Q If we go down to DEF 104, there's an entry</p> <p>5 on June 6, 2022, that indicates that Takeover paid</p> <p>6 John Abraham \$10,000, correct?</p> <p>7 A Correct.</p> <p>8 Q Why did Takeover pay John Abraham \$10,000</p> <p>9 on June 2022 -- or in June 2022?</p> <p>10 A I don't know who that is.</p> <p>11 Q As of June 20 -- or June 6, 2022, would</p> <p>12 Takeover have been able to pay Mr. Abraham \$10,000</p> <p>13 if Mr. Deppoleto had not made the initial \$500,000</p> <p>14 loan?</p> <p>15 A I don't know.</p> <p>16 Q We talked about before that</p> <p>17 Mr. Deppoleto's second loan to Takeover was for</p> <p>18 \$500,000 and it was made in July 2022, correct?</p> <p>19 A Correct.</p> <p>20 Q When did Takeover begin spending the funds</p> <p>21 that Mr. Deppoleto provided from that second</p> <p>22 \$500,000 loan?</p> <p>23 A I don't know.</p> <p>24 Q What did Takeover use the second \$500,000</p> <p>25 loan for?</p>	<p>59</p> <p>1 \$50,000 on July 26, 2022. Do you see that?</p> <p>2 A Yes.</p> <p>3 Q What was the purpose of that payment?</p> <p>4 A I believe it was for a sponsorship.</p> <p>5 Q Would Takeover have been able to make that</p> <p>6 payment but for Mr. Deppoleto's July 22 \$50,000</p> <p>7 loan?</p> <p>8 A I don't know.</p> <p>9 Q If we keep scrolling down in the same</p> <p>10 document, DEF 121, there's another entry on July</p> <p>11 27, 2022, indicating Takeover made a payment to LA</p> <p>12 Libations of 49,200. Do you see that?</p> <p>13 A I do.</p> <p>14 Q What was the purpose of that payment?</p> <p>15 A I don't know.</p> <p>16 Q Would Takeover have been able to make that</p> <p>17 \$49,000 payment but for Mr. Deppoleto's July 2022</p> <p>18 loan?</p> <p>19 A I don't know.</p> <p>20 Q Mr. Deppoleto's third loan to Takeover was</p> <p>21 for \$500,000, and it was also made in August 2022,</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q When did Takeover begin spending the money</p> <p>25 it received from Mr. Deppoleto in that third loan</p>
<p>58</p> <p>1 A I don't know.</p> <p>2 Q When did Takeover fully deplete the second</p> <p>3 \$500,000 loan from Mr. Deppoleto?</p> <p>4 A I don't know.</p> <p>5 Q What is the Stephen Gould Corporation,</p> <p>6 G-O-U-L-D?</p> <p>7 A I don't know what that is either.</p> <p>8 Q If we go down to DEF 118, there's an entry</p> <p>9 on July 8, 2022, that indicates that Takeover paid</p> <p>10 the Stephen Gould Corporation \$32,998, correct?</p> <p>11 A Correct.</p> <p>12 Q Reviewing it in that context, why did</p> <p>13 Takeover pay the Stephen Gould Corporation 32,000</p> <p>14 -- almost \$33,000 in July 2022?</p> <p>15 A I don't know.</p> <p>16 Q Would Mr. -- or strike that.</p> <p>17 Would Takeover have been able to make that</p> <p>18 \$33,000, approximately, payment to the Stephen</p> <p>19 Gould corporation but for Mr. Deppoleto's July</p> <p>20 2022 loan?</p> <p>21 A No, I don't know.</p> <p>22 Q We keep scrolling down in that same</p> <p>23 document. On DEF 119, there's a notation</p> <p>24 indicating that Takeover paid the professional --</p> <p>25 well, it just says, professional fighter. Paid it</p>	<p>60</p> <p>1 in August 2022?</p> <p>2 A I don't know.</p> <p>3 Q What was the third \$500,000 for</p> <p>4 Mr. Deppoleto used for?</p> <p>5 A I don't know.</p> <p>6 Q Do you know when Takeover fully depleted</p> <p>7 the third \$500,000 loan that Mr. Deppoleto made?</p> <p>8 A I don't know.</p> <p>9 Q If we scroll down in that the same</p> <p>10 document we've been looking at, at DEF 136, we've</p> <p>11 got an August 5, 2022, payment to professional</p> <p>12 fighter for \$50,000, correct?</p> <p>13 A Correct.</p> <p>14 Q What was that payment for?</p> <p>15 A I believe it was part of the sponsorship</p> <p>16 agreement they have.</p> <p>17 Q Would Takeover have been able to make that</p> <p>18 August 5, 2022, payment to professional fighter</p> <p>19 but for Mr. Deppoleto's August loan to Takeover?</p> <p>20 A I don't know.</p> <p>21 Q If we go down a little further, still on</p> <p>22 DEF 136, there's an August 19, 2022, payment from</p> <p>23 Takeover to NVE for \$124,504.62. Correct?</p> <p>24 A Correct.</p> <p>25 Q Why did Takeover pay NVE over \$124,000 on</p>

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<p>1 August 19, 2022?</p> <p>2 A I don't know.</p> <p>3 Q Would Takeover have been able to make that</p> <p>4 \$124,000 payment to NVE but for Mr. Deppoleto's</p> <p>5 August loan?</p> <p>6 A I don't know.</p> <p>7 Q What is Manolio & Firestone,</p> <p>8 M-A-N-O-L-I-O, and Firestone, all one word?</p> <p>9 A They're an attorney.</p> <p>10 Q A law firm?</p> <p>11 A Yes.</p> <p>12 Q If we keep going down in the same</p> <p>13 document, DEF 184, there's a November 21, 2022,</p> <p>14 payment to LA Libations for \$15,000, correct?</p> <p>15 A Correct.</p> <p>16 Q What was the purpose of Takeover's</p> <p>17 November 21, 2022, payment to LA Libations?</p> <p>18 A I don't know.</p> <p>19 Q Now, you were back with Takeover as of</p> <p>20 November 21, 2022, correct?</p> <p>21 A Correct.</p> <p>22 Q But you're telling me you don't have any</p> <p>23 idea what this payment was for?</p> <p>24 A We had no control over the bank account.</p> <p>25 Jason Tucker had it.</p>	<p>61</p> <p>63</p> <p>1 Q And then there's another entry on November</p> <p>2 18, 2022, for payroll for about \$1500, correct?</p> <p>3 A Correct.</p> <p>4 Q There's some additional November 18</p> <p>5 entries for payroll for 3700 and another one for</p> <p>6 3200, correct?</p> <p>7 A Correct.</p> <p>8 Q Do you know whose salaries those were?</p> <p>9 A Michael Tzanetatos, Michael Costello, and</p> <p>10 Kerby Fortner.</p> <p>11 Q How are you able to tell that?</p> <p>12 A I just -- I have knowledge of the payroll</p> <p>13 from previously.</p> <p>14 Q Who was getting 3700?</p> <p>15 A Michael Tzanetatos.</p> <p>16 Q Who was getting 3200?</p> <p>17 A Michael Costello.</p> <p>18 Q And who was getting the 1400?</p> <p>19 A Kerby.</p> <p>20 Q Other than those that we just talked</p> <p>21 about, do you know whether any of the 1.5 million</p> <p>22 Mr. Deppoleto loaned to Takeover was used to pay</p> <p>23 for salary for Mr. Tucker?</p> <p>24 A Yes. I've seen withdrawals in there for</p> <p>25 Mr. Tucker.</p>
<p>62</p> <p>1 Q We've discussed the three loans -- the</p> <p>2 three initial loans that totaled 1.5 million,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q Of that first 5 -- or, sorry. Of that</p> <p>6 first 1.5 million in loans from Mr. Deppoleto,</p> <p>7 were any of those funds used for Takeover's deal</p> <p>8 with Dollar General?</p> <p>9 A I don't know.</p> <p>10 MR. BENNION: I'm going to state a belated</p> <p>11 objection. Vague and ambiguous. Lacks</p> <p>12 foundation.</p> <p>13 Go ahead.</p> <p>14 Q Do you know how much, if any, of -- strike</p> <p>15 that.</p> <p>16 Of the 1.5 million that Mr. Deppoleto</p> <p>17 initially loaned to Takeover, were any of the</p> <p>18 funds used for salaries?</p> <p>19 A Looks like this says payroll right there,</p> <p>20 11/18.</p> <p>21 Q Are you looking at DEF 184?</p> <p>22 A Yes.</p> <p>23 Q And there's several entries. For example,</p> <p>24 there's one on November 22, 2022, correct?</p> <p>25 A Payroll taxes, yeah.</p>	<p>64</p> <p>1 Q How much was Mr. Tucker's salary?</p> <p>2 A 20,000 a month.</p> <p>3 Q Were any of the funds used for salaries</p> <p>4 for Mr. Tucker's wife?</p> <p>5 A Yes.</p> <p>6 Q How much?</p> <p>7 A I believe 7500 a month.</p> <p>8 Q Were any of the 1.5 million funds from</p> <p>9 Mr. Deppoleto to Takeover used to compensate</p> <p>10 Mr. McBride?</p> <p>11 A I believe so, yes.</p> <p>12 Q How much?</p> <p>13 A I don't know. They appeared to be all</p> <p>14 different amounts.</p> <p>15 Q Approximately how much to how much?</p> <p>16 A I would say between 3,000 and 7,000.</p> <p>17 Q Per month?</p> <p>18 A Per month, yeah.</p> <p>19 Q And was Mr. McBride an actual employee at</p> <p>20 that time, or was he just a member of the board of</p> <p>21 directors?</p> <p>22 A He was an officer and a director, I</p> <p>23 believe.</p> <p>24 Q When you say officer, what title?</p> <p>25 A CEO.</p>

<p>65</p> <p>1 Q And were any of the \$1.5 million that</p> <p>2 Mr. Deppoleto loaned to Takeover, were they used</p> <p>3 to compensate yourself?</p> <p>4 A No.</p> <p>5 Q Any of the \$1.5 million from</p> <p>6 Mr. Deppoleto's initial loans used to compensate</p> <p>7 Joseph Pavlik?</p> <p>8 A I believe so, yes.</p> <p>9 Q How much?</p> <p>10 A I think his was 3500 a month.</p> <p>11 Q Were any of the \$1.5 million that</p> <p>12 Mr. Deppoleto loaned to Takeover used to</p> <p>13 compensate Tom Zarro?</p> <p>14 A Not compensation, no.</p> <p>15 Q Why did you phrase it like that?</p> <p>16 A Looked like he was being -- there was some</p> <p>17 loan payments being made.</p> <p>18 Q So Takeover owed Mr. Zarro payments</p> <p>19 pursuant to a loan that Takeover and Mr. Zarro</p> <p>20 entered into, and you're telling me that</p> <p>21 Mr. Deppoleto's money was used to pay off some or</p> <p>22 all of Mr. Zarro's loan? Is that what you're</p> <p>23 saying?</p> <p>24 A I don't know if it was Mr. Deppoleto's</p> <p>25 money directly.</p>	<p>67</p> <p>1 else?</p> <p>2 A Not directly, no.</p> <p>3 Q When you say, not directly, what do you</p> <p>4 mean by that?</p> <p>5 A I don't know if it was his money directly</p> <p>6 or not.</p> <p>7 MR. HARVEY: We've been going for a little</p> <p>8 over an hour and a half. Now is probably a good</p> <p>9 time for a five-minute break. I assume people</p> <p>10 would like to take a quick five-minute break or</p> <p>11 so.</p> <p>12 MR. BENNION: Can we do 10, please?</p> <p>13 MR. HARVEY: Sure.</p> <p>14 MR. BENNION: Thank you.</p> <p>15 THE VIDEOGRAPHER: Going off the record.</p> <p>16 The time is 9:42.</p> <p>17 (Whereupon, a recess was taken.)</p> <p>18 THE VIDEOGRAPHER: We're back on the</p> <p>19 record. The time is 9:57.</p> <p>20 BY MR. HARVEY:</p> <p>21 Q What was Takeover's relationship with</p> <p>22 Great Northern Corp.?</p> <p>23 A I'm not sure.</p> <p>24 Q Great Northern Packaging?</p> <p>25 A Oh, I believe they were making a display</p>
<p>66</p> <p>1 Q But some of the money that Takeover spent</p> <p>2 in the time in which Mr. Deppoleto was making the</p> <p>3 investments in Takeover, some of Takeover's money</p> <p>4 in that time frame was used to pay Mr. Zarro's</p> <p>5 loan either down or off; is that correct?</p> <p>6 MR. BENNION: I'm going to state an</p> <p>7 objection. Lacks foundation. May call for</p> <p>8 speculation.</p> <p>9 Go ahead.</p> <p>10 A Yeah, I'm not sure exactly.</p> <p>11 Q Let me ask it this way: We talked about</p> <p>12 the first three loans that Mr. Deppoleto made to</p> <p>13 Takeover. And the dates, just to give ourselves</p> <p>14 some guideposts, were May 2022 through August</p> <p>15 2022, correct?</p> <p>16 A Yes.</p> <p>17 Q In that May to August 2022 time frame, did</p> <p>18 Takeover make payments to Mr. Zarro to either pay</p> <p>19 off or pay down Mr. Zarro's loan?</p> <p>20 A Looks like I saw one payment.</p> <p>21 Q In the exhibit we were just looking at?</p> <p>22 A Yes.</p> <p>23 Q Other than what we've discussed over the</p> <p>24 last few minutes here, are you aware of</p> <p>25 Mr. Deppoleto's funds being used for anything</p>	<p>68</p> <p>1 for the -- for the gamer shots.</p> <p>2 Q So it was a vendor of Takeover's, correct?</p> <p>3 A Yes.</p> <p>4 Q So at some point, Takeover would have owed</p> <p>5 Great Northern money, correct?</p> <p>6 A I believe so, yes.</p> <p>7 Q We discussed a couple of times the October</p> <p>8 and November 2022 loans that Mr. Deppoleto alleged</p> <p>9 that he made to Takeover. Do you remember those</p> <p>10 questions from a little bit ago?</p> <p>11 A Yes.</p> <p>12 Q Are you aware of Mr. Deppoleto making</p> <p>13 those payments directly to Great Northern</p> <p>14 Packaging or Great Northern Corp. on Takeover's</p> <p>15 behalf?</p> <p>16 A I'm not sure.</p> <p>17 Q And you said you didn't look at</p> <p>18 Mr. Deppoleto's document production before today,</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q So you didn't see, for example,</p> <p>22 Bates-labeled document PLTF 338, correct?</p> <p>23 MR. BENNION: I'm going to state an</p> <p>24 objection. Lacks foundation.</p> <p>25 Go ahead.</p>

<p>69</p> <p>1 A I don't know what that is, no.</p> <p>2 Q Did you ever see a document Bates-labeled</p> <p>3 PLTF 346?</p> <p>4 A I don't know what that is.</p> <p>5 Q You would agree with me that if</p> <p>6 Mr. Deppoleto made payments to Great Northern on</p> <p>7 behalf of Takeover, that's the same as making a</p> <p>8 loan to Takeover, correct?</p> <p>9 MR. BENNION: Objection to the extent it</p> <p>10 may call for a legal conclusion.</p> <p>11 A No.</p> <p>12 Q Why do you say no?</p> <p>13 A I don't agree with that.</p> <p>14 Q Yeah, but why?</p> <p>15 A I have no knowledge of it.</p> <p>16 Q Okay.</p> <p>17 MR. HARVEY: Don, I'll have to forward</p> <p>18 these to you in a moment. I wasn't expecting to</p> <p>19 have to use these today. But you'll be able to</p> <p>20 see them on my screen.</p> <p>21 Q So I'm going to show you a couple</p> <p>22 documents, Mr. Holley.</p> <p>23 Are you able to see my screen?</p> <p>24 A Yes.</p> <p>25 MR. HARVEY: And I forgot, what exhibit</p>	<p>71</p> <p>1 Mr. Deppoleto paid \$386,773.86 to Takeover's</p> <p>2 vendor, Great Northern Corp., correct?</p> <p>3 A To Great Northern Corp., yes.</p> <p>4 Q In October 2022, correct?</p> <p>5 A Okay.</p> <p>6 Q Okay. Now I'm going to show you -- give</p> <p>7 me one second. Take that down. I'm going to show</p> <p>8 you another document. This will be Exhibit 18.</p> <p>9 (Exhibit 18 was marked for identification</p> <p>10 and is attached to the transcript.)</p> <p>11 Q This document is Bates-labeled PLTF 359,</p> <p>12 correct? Do you see that?</p> <p>13 A Oh, yeah. Okay.</p> <p>14 Q And at the top, it's dated November 4,</p> <p>15 2022, and it's a receipt from Great Northern Corp.</p> <p>16 again, correct?</p> <p>17 A Okay.</p> <p>18 Q And the customer information again is</p> <p>19 James Deppoleto, correct?</p> <p>20 A Correct.</p> <p>21 Q And the amount is \$128,924.62, correct?</p> <p>22 A (Indiscernible.)</p> <p>23 THE REPORTER: I'm sorry. I didn't catch</p> <p>24 that answer.</p> <p>25 A Correct.</p>
<p>70</p> <p>1 did we leave -- what exhibit number did we leave</p> <p>2 off on?</p> <p>3 THE REPORTER: One moment. This will be</p> <p>4 12.</p> <p>5 MR. HARVEY: Let's actually make this 17.</p> <p>6 I know we're going out of order, but it will make</p> <p>7 sense as we go forward.</p> <p>8 (Exhibit 17 was marked for identification</p> <p>9 and is attached to the transcript.)</p> <p>10 Q So Exhibit 17 is Bates-labeled PLTF 346,</p> <p>11 and the top of it is a receipt dated 10/13/2022</p> <p>12 from Great Northern Corp. Do you see that?</p> <p>13 A I do.</p> <p>14 Q And the total amount Great Northern Corp.</p> <p>15 received was \$386,773.86, correct?</p> <p>16 A Okay.</p> <p>17 Q And that is the same number that matches</p> <p>18 up with the October 2022 loan number that</p> <p>19 Mr. Deppoleto was alleging that we were talking</p> <p>20 about, correct?</p> <p>21 A I believe so, yes.</p> <p>22 Q Okay. And we see the customer</p> <p>23 information, name, James Deppoleto, correct?</p> <p>24 A Okay.</p> <p>25 Q So according to this receipt,</p>	<p>72</p> <p>1 Q And that's the same number that matches up</p> <p>2 with the November 2022 loan that Mr. Deppoleto</p> <p>3 alleges that he gave to Takeover, correct?</p> <p>4 A I believe so.</p> <p>5 Q And again, this is a receipt provided by</p> <p>6 Takeover's vendor, Great Northern Corp., correct?</p> <p>7 MR. BENNION: Objection, calls for</p> <p>8 speculation.</p> <p>9 A Yeah, I don't know. It's from Great</p> <p>10 Northern Corp. It doesn't say anything about</p> <p>11 Takeover.</p> <p>12 Q Correct. But Great Northern is Takeover's</p> <p>13 vendor, correct?</p> <p>14 A I don't know.</p> <p>15 Q I thought you told me a few minutes ago</p> <p>16 that Great Northern was building packaging</p> <p>17 displays for Takeover?</p> <p>18 A I'm not sure if they are. I said they</p> <p>19 were building them for the energy shots.</p> <p>20 Q Takeover's energy shots?</p> <p>21 A I don't know.</p> <p>22 Q Well, who other than Takeover?</p> <p>23 A Clearly it's for Mr. Deppoleto.</p> <p>24 Q So are you telling me that Takeover did</p> <p>25 not order anything from Great Northern in the</p>

<p>73</p> <p>1 October through November 2022 time frame?</p> <p>2 A Not that I'm aware of.</p> <p>3 Q Did Takeover ever order anything from</p> <p>4 Great Northern?</p> <p>5 A I don't know.</p> <p>6 Q Who would know that?</p> <p>7 A I guess James Deppoleto.</p> <p>8 Q He would know if Takeover ordered</p> <p>9 something from Great Northern?</p> <p>10 A I don't know.</p> <p>11 Q Mr. Deppoleto's never worked for Takeover,</p> <p>12 correct?</p> <p>13 A I believe he was a director.</p> <p>14 Q He was never an employee, correct?</p> <p>15 A Just a director, as far as I know.</p> <p>16 Q Which is different than an employee,</p> <p>17 correct?</p> <p>18 A Correct.</p> <p>19 Q And you're not aware of Mr. Deppoleto ever</p> <p>20 making his own beverages for sale, correct?</p> <p>21 A Not that I'm aware of.</p> <p>22 Q You're not aware of any reason why</p> <p>23 Mr. Deppoleto would need packaging displays,</p> <p>24 correct?</p> <p>25 A I don't know.</p>	<p>75</p> <p>1 whether anyone from Takeover ever asked</p> <p>2 Mr. Deppoleto to pay any of Takeover's vendors,</p> <p>3 correct?</p> <p>4 A Not that I know of.</p> <p>5 Q You don't have personal knowledge?</p> <p>6 A No.</p> <p>7 Q And so you'd agree with me that it's</p> <p>8 possible that someone from Takeover asked</p> <p>9 Mr. Deppoleto to pay Great Northern on Takeover's</p> <p>10 behalf, correct?</p> <p>11 A I don't know.</p> <p>12 Q It's possible, true?</p> <p>13 A I'm not sure.</p> <p>14 Q You're not saying it's impossible, are</p> <p>15 you?</p> <p>16 A Pretty sure I've answered the question.</p> <p>17 Q I asked a slightly different one. You</p> <p>18 keep saying, I don't know. I'm asking you now,</p> <p>19 are you saying it's impossible?</p> <p>20 A I don't know.</p> <p>21 Q Who from Takeover in the October 2022 --</p> <p>22 well, let's say June 2022 through October 2022,</p> <p>23 who from Takeover would have been responsible for</p> <p>24 receipt and appropriate handling of invoices from</p> <p>25 Takeover's vendors?</p>
<p>74</p> <p>1 Q Who would have been responsible for</p> <p>2 interactions with Great Northern at Takeover?</p> <p>3 A I'm not sure.</p> <p>4 Q Having seen these documents, is it still</p> <p>5 your testimony that Takeover did not receive value</p> <p>6 in the amounts of 128,924.62 and 386,773.86 from</p> <p>7 Mr. Deppoleto in the November and October 2022</p> <p>8 time frame?</p> <p>9 A Correct.</p> <p>10 Q And why do you say that?</p> <p>11 A No money was received, and I've never seen</p> <p>12 any loan documents.</p> <p>13 Q And you told me that in the October 2022</p> <p>14 time frame, you didn't have any discussions with</p> <p>15 Mr. Deppoleto whatsoever, correct?</p> <p>16 A Correct.</p> <p>17 Q And you also don't have personal knowledge</p> <p>18 about what anyone else from Takeover may have</p> <p>19 discussed with Mr. Deppoleto, correct?</p> <p>20 A Correct.</p> <p>21 Q And so you don't know whether anyone from</p> <p>22 Takeover asked Mr. Deppoleto to pay any vendor for</p> <p>23 Takeover, correct?</p> <p>24 A There's no record of it as I've seen.</p> <p>25 Q You don't have personal knowledge as to</p>	<p>76</p> <p>1 A I believe Jason Tucker.</p> <p>2 Q And so if Mr. Tucker received a vendor</p> <p>3 invoice from Great Northern Corp. -- strike that.</p> <p>4 If Takeover received an invoice from Great</p> <p>5 Northern Corp., it would have been Mr. Tucker who</p> <p>6 would have handled that invoice, correct?</p> <p>7 MR. BENNION: Objection, calls for</p> <p>8 speculation.</p> <p>9 A Yeah, I'm not sure.</p> <p>10 Q Well, I just asked you who would have</p> <p>11 handled invoices, and you told me Mr. Tucker. Is</p> <p>12 there somebody else?</p> <p>13 A (Inaudible.)</p> <p>14 Q I didn't hear you. Is there somebody else</p> <p>15 other than Mr. Tucker?</p> <p>16 A Possibly.</p> <p>17 Q Who?</p> <p>18 A I don't know.</p> <p>19 Q You weren't there at the time frame of</p> <p>20 June 2022 through October 2022, so you can't</p> <p>21 answer one way or another, true?</p> <p>22 A Correct.</p> <p>23 Q And so if Mr. Tucker testified that he was</p> <p>24 responsible for invoices, and he actually received</p> <p>25 invoices from Great Northern totaling the two</p>

<p>77</p> <p>1 amounts that we've been talking about for October 2 2022 and November 2022, you wouldn't have any 3 personal knowledge or basis to dispute his 4 testimony, true? 5 A Not that I'm aware of. 6 Q Okay. Okay. Now I'm going to move to 7 Topic Number 3, which is the identification of all 8 individuals comprising the board of directors of 9 Takeover and compensation of those directors. 10 So first question on that topic. As of 11 June 10, 2021, who comprised Takeover's board of 12 directors? 13 A Which date? I'm sorry. 14 Q June 10, 2021. 15 A '21? 16 Q Yes. 17 A Myself and Toby McBride. 18 Q And at or around that date, there was a 19 resolution that was passed that appointed 20 yourself, Jason Tucker, Joseph Pavlik, and Toby 21 McBride as the directors of Takeover. Correct? 22 A No. 23 Q I'm sorry. I didn't hear you. 24 A No. 25 Q Why do you say no?</p>	<p>79</p> <p>1 Did you not -- 2 A Not as a director, no. 3 Q What's that? 4 A Not as a director. 5 Q Do you remember telling me in your 6 previous deposition about taking a percentage -- 7 when an investment came in, you and Mr. McBride 8 would take a percentage of the investment and keep 9 it for yourselves? Do you remember that testimony 10 from a couple weeks ago? 11 A Yes. 12 Q And are you telling me that you took that 13 not in your capacity as a board member -- 14 A Correct. 15 Q -- but in some other capacity? 16 A Yes. 17 Q What capacity did you take it in? 18 A As an officer. 19 Q And what was your role when this was going 20 on? 21 A COO. 22 Q And what was his role? 23 A CEO. 24 Q And you said you didn't disclose that 25 compensation scheme to your investors, correct?</p>
<p>78</p> <p>1 A That wasn't done until November of '21. 2 Q Okay. So it's your testimony that as of 3 November 2021, there was a resolution that was 4 passed that appointed Mr. Holley, yourself, 5 Mr. Tucker, Joseph Pavlik, and Toby McBride as the 6 directors of Takeover, correct? 7 A Correct. 8 Q And who authorized those appointments at 9 that time? In other words -- I think you just 10 answered it. Before that meeting and the 11 resolution was passed, who was on the board of 12 directors for Takeover? 13 A Myself and Toby McBride. 14 Q So you two authorized the appointment of 15 the other individuals in November 2021, correct? 16 A Yes. 17 Q Beginning in June of 2021, were any of the 18 directors receiving compensation from Takeover? 19 In their role as director, not as an employee. 20 A No. 21 Q Now, I thought you told me that in your 22 previous deposition -- or in your previous 23 deposition, I thought you told me that there was a 24 time when you and Mr. McBride were receiving 25 compensation in your role as a board director.</p>	<p>80</p> <p>1 MR. BENNION: I'm going to state an 2 objection. It lacks foundation. May call for 3 speculation. 4 Go ahead. 5 A No. 6 Q As you sit here today, you're telling me 7 that in your deposition testimony from October 4, 8 you did not tell me -- 9 A Oh, I'm sorry. I think I double-negatived 10 you again. We did not -- 11 Q Let me ask it cleaner. 12 A Okay. 13 Q I'll ask it cleaner. 14 The compensation scheme that we were 15 discussing where you and Mr. McBride were taking a 16 portion of the investments that investors made and 17 keeping it for yourselves, did you disclose that 18 to the investors? 19 A No. 20 Q Okay. Now, going back to the question 21 that started all this. I had asked you, in June 22 2021, were any directors receiving compensation 23 from Takeover. And I think you said, no, true? 24 A Correct. 25 Q Is that what you said?</p>

Transcript of Mike Holley, Corporate Representative
Conducted on November 19, 2024

21 (81 to 84)

<p>81</p> <p>1 A Yes.</p> <p>2 Q How about at any point from June 2021 on?</p> <p>3 Did directors of Takeover receive any compensation</p> <p>4 from Takeover?</p> <p>5 A Not that I recall.</p> <p>6 Q Would there be records reflecting that?</p> <p>7 Because you're saying, not that I recall. Would</p> <p>8 there be records that would tell us whether</p> <p>9 there's a certain answer to that?</p> <p>10 A Well, I mean, after December, I wasn't</p> <p>11 there, so I'm not sure.</p> <p>12 Q In the time that you were there?</p> <p>13 A Then no.</p> <p>14 Q In December 2021, did the Takeover board</p> <p>15 of directors vote to remove you from Takeover's</p> <p>16 board of directors?</p> <p>17 A Improperly, but yes.</p> <p>18 Q Why did the Takeover board of directors</p> <p>19 vote to remove you?</p> <p>20 A Jason Tucker alleged that I had</p> <p>21 wrongdoing.</p> <p>22 Q From that point forward, did you receive</p> <p>23 any compensation from Takeover?</p> <p>24 A From December until probably December of</p> <p>25 '22, no.</p>	<p>83</p> <p>1 A Correct.</p> <p>2 Q And I understand you weren't personally</p> <p>3 there, but did you -- in preparation for your</p> <p>4 testimony today, did you speak to, for example,</p> <p>5 Mr. Tucker to determine whether he received any</p> <p>6 compensation as a director in that time frame?</p> <p>7 A No.</p> <p>8 Q Did you speak to Mr. Pavlik in preparation</p> <p>9 for your testimony today about whether he received</p> <p>10 any compensation as a director in that time frame?</p> <p>11 A No.</p> <p>12 Q Did you speak to Mr. McBride in</p> <p>13 preparation for your deposition --</p> <p>14 A No.</p> <p>15 Q -- today to determine whether he received</p> <p>16 any compensation as a director in the time frame</p> <p>17 you were gone?</p> <p>18 A No.</p> <p>19 Q Did the Takeover board of directors</p> <p>20 convene a meeting on November 7, 2022?</p> <p>21 A I believe so, yes.</p> <p>22 Q Who called that meeting?</p> <p>23 A Toby McBride.</p> <p>24 Q It wasn't you?</p> <p>25 A No.</p>
<p>82</p> <p>1 Q After that point, you received</p> <p>2 compensation from Takeover; is that true?</p> <p>3 A Yes.</p> <p>4 Q And why were you receiving compensation</p> <p>5 after December 2022?</p> <p>6 A For working.</p> <p>7 Q In what role?</p> <p>8 A As an officer.</p> <p>9 Q What type of officer?</p> <p>10 A I believe COO.</p> <p>11 Q Going back to the December 2022 board of</p> <p>12 directors meeting where they voted to remove you.</p> <p>13 After that vote, the Takeover board of directors</p> <p>14 consisted of Mr. McBride, Mr. Tucker, and</p> <p>15 Mr. Pavlik, correct?</p> <p>16 A Yes.</p> <p>17 Q And that remained the list of active board</p> <p>18 of directors until the end of November 2022,</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q And you said you don't know whether any of</p> <p>22 the directors were receiving compensation from</p> <p>23 Takeover from the time you left in December 2021</p> <p>24 until you were reinstated towards the end of 2022;</p> <p>25 is that correct?</p>	<p>84</p> <p>1 Q In what format did he call the meeting?</p> <p>2 In other words, via phone call or email or letter?</p> <p>3 A Email.</p> <p>4 Q I'm going to share my screen with you to</p> <p>5 show you another document. Are you able to see my</p> <p>6 screen?</p> <p>7 A Yes.</p> <p>8 Q And this one was previously marked as</p> <p>9 Holley Exhibit 3. We're going to mark it for this</p> <p>10 deposition as Exhibit 12.</p> <p>11 (Exhibit 12 was marked for identification</p> <p>12 and is attached to the transcript.)</p> <p>13 Q And this is labeled, resolution of the</p> <p>14 board of directors of Labor Smart, Inc., correct?</p> <p>15 A Yeah. Yes.</p> <p>16 Q What is this, generally speaking?</p> <p>17 A It's a resolution from the board of</p> <p>18 directors of Labor Smart.</p> <p>19 Q And it deals with the November 7 meeting</p> <p>20 that was apparently noticed via November 4, 2022,</p> <p>21 email, correct?</p> <p>22 A Correct.</p> <p>23 Q And it says this was held via conference</p> <p>24 call?</p> <p>25 A Yes.</p>

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<p>85</p> <p>1 Q And if we look down at DEF 4, towards the</p> <p>2 bottom of the page, that tells us that as of</p> <p>3 November 7, 2022, you were appointed to Takeover's</p> <p>4 board of directors, correct?</p> <p>5 A Yes.</p> <p>6 Q And it says Jason Tucker was removed from</p> <p>7 Takeover's board of directors, correct?</p> <p>8 A Yes.</p> <p>9 Q And so who comprised Takeover's board of</p> <p>10 directors after that November 7, 2022, board</p> <p>11 meeting?</p> <p>12 A Myself, Toby McBride, Joseph Pavlik.</p> <p>13 Q How long did that group remain as the</p> <p>14 board of directors?</p> <p>15 A I believe that Toby resigned in April of</p> <p>16 '23.</p> <p>17 Q How about Mr. Pavlik?</p> <p>18 A I believe he's still on the board.</p> <p>19 Q Yourself?</p> <p>20 A Yes.</p> <p>21 Q Still on the board?</p> <p>22 A Yes.</p> <p>23 Q And from this point forward, were any</p> <p>24 directors receiving compensation from Takeover?</p> <p>25 A No.</p>	<p>87</p> <p>1 Q So as of April 17, 2023, did Toby McBride</p> <p>2 resign from Takeover's board of directors?</p> <p>3 A Yes.</p> <p>4 Q And as of April 17, 2023, did Tom Zarro</p> <p>5 become a Takeover board member?</p> <p>6 A Yes.</p> <p>7 Q Did Takeover seek Mr. Deppoleto's consent</p> <p>8 prior to Mr. Zarro becoming a board member?</p> <p>9 A No.</p> <p>10 Q So after this meeting, as of April 17,</p> <p>11 2023, Takeover's board consisted of yourself,</p> <p>12 Mr. Pavlik, and Mr. Zarro, correct?</p> <p>13 A Yes.</p> <p>14 Q How long did that group remain as the</p> <p>15 board of directors?</p> <p>16 A I believe it still is.</p> <p>17 Q Have there been any changes to the</p> <p>18 compensation -- or, I'm sorry, any changes to the</p> <p>19 composition of the board of directors since April</p> <p>20 17, 2023? I know you said you three are still on.</p> <p>21 Has there been anyone else added or --</p> <p>22 A No.</p> <p>23 Q So as of today, Takeover believes the</p> <p>24 board is comprised of yourself, Mr. Pavlik, and</p> <p>25 Mr. Zarro?</p>
<p>86</p> <p>1 Q Take that one down. Show you what we're</p> <p>2 going to mark as Exhibit 13.</p> <p>3 (Exhibit 13 was marked for identification</p> <p>4 and is attached to the transcript.)</p> <p>5 Q This is Bates-labeled DEF 421, and the top</p> <p>6 says, resolution of board of directors, Takeover</p> <p>7 Industries, Inc., correct?</p> <p>8 A Correct.</p> <p>9 Q And it's describing a meeting held on</p> <p>10 April 17, 2023, correct?</p> <p>11 A Correct.</p> <p>12 Q You recognize this document?</p> <p>13 A I do.</p> <p>14 Q And what is it?</p> <p>15 A It was the minutes from the board of</p> <p>16 directors meeting.</p> <p>17 Q And if we look down, there's a couple</p> <p>18 whereas clauses and a couple resolve clauses,</p> <p>19 there about halfway down that first page. And I</p> <p>20 don't need you to read all of them into the</p> <p>21 record, but go ahead and just read the highlighted</p> <p>22 portion that I have there for you. And let me</p> <p>23 know when you're done, and I'll ask you a couple</p> <p>24 questions about that portion.</p> <p>25 A Okay.</p>	<p>88</p> <p>1 A Correct.</p> <p>2 Q After this April 2023 meeting, were any</p> <p>3 directors receiving compensation from Takeover?</p> <p>4 A No.</p> <p>5 Q Okay. I'm going to take that one down,</p> <p>6 and now I want to move to Topic Number 4, which is</p> <p>7 information regarding the decision not to repay</p> <p>8 Mr. Deppoleto after he sent the notice of</p> <p>9 defaults.</p> <p>10 So the first document -- bless you. The</p> <p>11 first document I'm going to show you will be</p> <p>12 Exhibit 14.</p> <p>13 (Exhibit 14 was marked for identification</p> <p>14 and is attached to the transcript.)</p> <p>15 Q Are you able to see my screen?</p> <p>16 A Yes.</p> <p>17 Q And we see this one has a Holley Exhibit 7</p> <p>18 sticker on the bottom right, so you've seen this</p> <p>19 at your deposition before, correct?</p> <p>20 A Correct.</p> <p>21 Q And just generally describe what is</p> <p>22 Exhibit 14 for today's deposition.</p> <p>23 A A notice of default.</p> <p>24 Q And you have seen this document before</p> <p>25 your previous deposition in October of this year</p>

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<p>89</p> <p>1 too, correct?</p> <p>2 A Correct.</p> <p>3 Q When did you first receive it?</p> <p>4 A On or about November 8th, I guess.</p> <p>5 Q 2022?</p> <p>6 A Yes.</p> <p>7 Q After Takeover received this notice, did</p> <p>8 Takeover's officers or directors discuss the</p> <p>9 notice?</p> <p>10 A Only with our attorneys.</p> <p>11 Q Who in particular was in those</p> <p>12 discussions?</p> <p>13 A Probably myself, Joseph Pavlik, Toby</p> <p>14 McBride, and --</p> <p>15 Q And what lawyers?</p> <p>16 A Jennifer Reiter. Possibly Matthew Canini.</p> <p>17 Q Jennifer Reiter and Matthew --</p> <p>18 A Canini.</p> <p>19 Q Anyone else?</p> <p>20 A Not that I remember.</p> <p>21 Q When did this discussion take place?</p> <p>22 A I don't recall.</p> <p>23 Q With this notice, Mr. Deppoleto is</p> <p>24 providing notice to Takeover that it defaulted on</p> <p>25 Mr. Deppoleto's loans, correct?</p>	<p>91</p> <p>1 begin a process to repay Mr. Deppoleto?</p> <p>2 A Truthfully, we didn't even have control of</p> <p>3 the account.</p> <p>4 MR. BENNION: Let me state an objection.</p> <p>5 I apologize for my belated response. I'll state</p> <p>6 an objection. May call for a legal conclusion.</p> <p>7 Vague and ambiguous.</p> <p>8 A Yeah. We had no control of the bank</p> <p>9 account. Jason Tucker was the only one on the</p> <p>10 account. He would not relinquish control.</p> <p>11 Q At some point, you did regain control of</p> <p>12 the Takeover bank account, correct?</p> <p>13 A A couple months later, yeah.</p> <p>14 Q At that point, did you -- why didn't you</p> <p>15 begin a process to repay Mr. Deppoleto's loans?</p> <p>16 A There was no money left in the accounts.</p> <p>17 Q Upon receiving this notice, did Takeover</p> <p>18 begin a process to cure its default?</p> <p>19 MR. BENNION: Objection. May call for a</p> <p>20 legal conclusion. Vague and ambiguous.</p> <p>21 A We started settlement talks with</p> <p>22 Mr. Deppoleto.</p> <p>23 Q You understood that there were cure</p> <p>24 provisions in the loan documents, though, correct?</p> <p>25 MR. BENNION: Objection. Vague and</p>
<p>90</p> <p>1 A Yes.</p> <p>2 Q Takeover agrees that it did default on its</p> <p>3 obligations to Mr. Deppoleto, correct?</p> <p>4 MR. BENNION: Objection, calls for a legal</p> <p>5 conclusion.</p> <p>6 A I'm sorry. Can you repeat?</p> <p>7 Q Yeah. And we've went through this before,</p> <p>8 but just to remind you, your lawyer may object.</p> <p>9 There's no judge here to rule on it. So just let</p> <p>10 him get his objection on the record, and then</p> <p>11 unless he tells you otherwise, go ahead and</p> <p>12 answer.</p> <p>13 My question was, Takeover agrees that it</p> <p>14 defaulted on its obligations to Mr. Deppoleto,</p> <p>15 correct?</p> <p>16 MR. BENNION: Same objection.</p> <p>17 A Yes.</p> <p>18 Q Did you say yes? I'm sorry. I didn't</p> <p>19 hear you.</p> <p>20 A Yes.</p> <p>21 Q Okay. Upon receiving this notice, did</p> <p>22 Takeover begin a process to repay Mr. Deppoleto's</p> <p>23 loans?</p> <p>24 A No. There was no money in the accounts.</p> <p>25 Q Any other reasons why Takeover didn't</p>	<p>92</p> <p>1 ambiguous. Lacks foundation.</p> <p>2 A I don't recall what they are firsthand,</p> <p>3 no.</p> <p>4 Q If there were cure provisions -- well, let</p> <p>5 me ask you this way: Other than starting</p> <p>6 settlement talks with Mr. Deppoleto, did Takeover</p> <p>7 begin any other process to cure its default?</p> <p>8 MR. BENNION: Same objection.</p> <p>9 A Not that I'm aware of.</p> <p>10 Q Why not? Why didn't -- other than</p> <p>11 beginning settlement discussions, why didn't</p> <p>12 Takeover begin any other process to cure its</p> <p>13 default?</p> <p>14 MR. BENNION: Same objection.</p> <p>15 A There was no money, no products. We were</p> <p>16 losing our trademarks. I mean, there was -- the</p> <p>17 company was -- there was nothing left.</p> <p>18 Q I'll zoom in a little bit. And you see</p> <p>19 there's a section here on page 2 of this</p> <p>20 Exhibit 14, starts off with, events of default.</p> <p>21 And I'll zoom in, like I said, so you can see a</p> <p>22 little better. I know it's a little fuzzy right</p> <p>23 now. Are you able to read it now?</p> <p>24 A Yes.</p> <p>25 Q So under that section, it says, events of</p>

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<p>93</p> <p>1 default. It goes on to have several paragraphs. 2 And like I said, I don't need you to read all 3 those into the record, but I would like you to 4 read them, and then I'm going to ask you a 5 question about it. So -- and I understand I'll 6 have to scroll down for you. So tell me when you 7 need me to scroll down so that you can read all 8 these subparagraphs under paragraph 2, events of 9 default. 10 A Okay. Okay. 11 Q You've read through all of Section 2, 12 including subparagraphs A through G -- 13 A Yes. 14 Q -- of Exhibit 14? 15 I'm sorry. Did you say yes? 16 A Yes. 17 Q Oh, I'm sorry. I didn't hear you. 18 A Oh. 19 Q Does Takeover disagree with with any of 20 the listed events of default in paragraph 2? 21 MR. BENNION: Objection to the extent it 22 may call for a legal conclusion. 23 A Yes. 24 Q Which ones? I can go back up too. 25 A A, B, C, E. Can you scroll down for me?</p>	<p>95</p> <p>1 NPA's execution, you have no personal knowledge as 2 to whether Mr. Deppoleto was aware of the other 3 litigation at the time of the NPA's execution, 4 correct? 5 A I don't know. 6 Q Okay. So when you said earlier you know 7 that Mr. Deppoleto was aware of them, you're 8 referring to the fact that at some later date, you 9 do know that he became aware of it, but you can't 10 say for sure whether at the time of the NPA's 11 execution he actually had knowledge of those other 12 litigations, correct? 13 MR. BENNION: Objection, compound. 14 A Yeah, I don't know. 15 MR. HARVEY: That actually was compound. 16 I agree with you, Counsel. Let me break it down a 17 little bit. 18 Q You testified a moment ago that the reason 19 you disagreed with 2A was because you said Mr. -- 20 you knew that Mr. Deppoleto was aware of the other 21 two pieces of litigation referenced there, 22 correct? 23 A I wasn't sure if he knew at the time of 24 signing it, no. I'm not sure. 25 Q Okay. Correct. And so when you said that</p>
<p>94</p> <p>1 Q Yeah. 2 A F, G. 3 Q Okay. So you are in agreement with 2D, 4 that that was an event of default, correct? 5 MR. BENNION: Objection to the extent it 6 may call for a legal conclusion. 7 A From my knowledge, I don't believe that 8 there was ever a directors or officers insurance. 9 Q Okay. You said you disagreed with 2A. 10 Why specifically do you disagree with 2A? 11 A I know that Mr. Deppoleto has personal 12 knowledge of the Takeover versus Holley case and 13 of the opposition of NXT LVL fitness water. 14 Q And this is focusing on whether there was 15 at the time of the NPA's execution. You're 16 telling me that you knew or you know that 17 Mr. Deppoleto had knowledge of those at the time 18 of the execution, or are you saying you know he 19 learned of them later? 20 MR. BENNION: Objection, vague and 21 ambiguous. 22 A Yeah, I don't know exactly. I wasn't 23 there when these were signed. 24 Q Okay. So when it comes to A, which is 25 focusing at the time -- on at the time of the</p>	<p>96</p> <p>1 before, you were referring to you know that at 2 some later date, he became aware of that, those 3 other pieces of litigation; you just don't know 4 when, true? 5 A Correct. 6 Q Okay. All right. As to 2B, you said you 7 disagreed with 2B. What in particular do you 8 agree about -- or disagree about in 2B? 9 A From my knowledge, I believe that 10 Mr. Deppoleto was copied on all of these 11 correspondence about this. 12 Q This one in particular is referring to a 13 related party receivable communication attached to 14 this letter as Exhibit C, correct? 15 A Correct. 16 Q So if we go down to Exhibit C. 17 MR. BENNION: And just for a point of 18 clarification, Counsel, is this exhibit 73 pages? 19 It appears to be. 20 MR. HARVEY: Yes. 21 MR. BENNION: Okay. Thank you. 22 MR. HARVEY: Mm-hmm. 23 Q So Exhibit C is actually page 72 and 73 of 24 the PDF that comprises Exhibit 14. If we look at 25 the related party receivable confirmation that was</p>

<p>97</p> <p>1 referenced in paragraph 2B, there's a date on it 2 of March 25, 2022, correct? 3 A Correct. 4 Q And we've established several times today, 5 Mr. Deppoleto's first loan to Takeover was in May 6 2022, correct? 7 A Yes. 8 Q So this related party receivable 9 confirmation is several months before his first 10 loan to Takeover, correct? 11 A Correct. 12 Q And in this document that's dated March 13 25, 2022, it's saying that as of December 31, 14 2021, so even earlier, Mr. McBride is saying he 15 owed Takeover Industries \$243,000 and change, 16 correct? 17 MR. BENNION: Objection, calls for a legal 18 conclusion. 19 A Yeah, I'm not sure. I wasn't there when 20 this happened. 21 Q Right. But as the corporate 22 representative to speak on behalf of Takeover as 23 it related to the decision not to repay 24 Mr. Deppoleto after issuance of the notices in 25 default, you have seen this document before, true?</p>	<p>99</p> <p>1 A Correct. 2 Q So what is your basis for saying that 3 Mr. Deppoleto had -- was copied on this related 4 party receivable communication when it was issued 5 in March of 2022? 6 MR. BENNION: Objection, misstates prior 7 testimony. Go ahead. 8 A Yeah, I didn't say that he was copied on 9 it when it happened. 10 Q What did you say? If I misunderstood you, 11 I apologize. What did you say? 12 A I just thought that he had knowledge of 13 it. 14 Q And what's your factual basis for saying 15 that? 16 A I know that he's been copied on multiple 17 emails about this. 18 Q Okay. He wasn't -- we just looked at it. 19 We can look at it again. He wasn't listed as a cc 20 on the related party receivable communication, 21 correct? 22 A Not at the time the -- when it was signed, 23 no. 24 Q And you've never seen an email or a letter 25 or anything along those lines from anyone to</p>
<p>98</p> <p>1 A I have seen this, yes. 2 Q And this document is a Takeover document, 3 correct? 4 A No. I believe it's an audit document from 5 Ben Borges. 6 Q Okay. In any event, going all the way 7 back up to 2B, now that we've refreshed our memory 8 by looking at this March 25, 2022, related party 9 receivable confirmation, so paragraph 2B, which is 10 on page 3 of 73 of the Exhibit 14, when I asked 11 you a couple minutes ago why you disagreed with 12 paragraph 2B, I believe you told me because you 13 thought that Mr. Deppoleto was copied on the 14 related party receivable communication. Is that 15 what you answered before? 16 A I believe so. I know that this was found 17 in the Arizona case to not be true. 18 Q You've said several times you weren't 19 involved with Takeover at any point in the first 20 half of 2022, just to narrow our time frame, 21 correct? 22 A Correct. 23 Q And you weren't involved with any of the 24 initial discussions or any discussions with 25 Mr. Deppoleto in the first half of 2022, correct?</p>	<p>100</p> <p>1 Mr. Deppoleto before the first loan that he made 2 in which he was sent a copy of this related party 3 receivable communication, correct? 4 A Not that I'm aware of, no. 5 Q And you never sent him a copy of this 6 related party receivable communication before he 7 made the first loan, correct? 8 A No. 9 Q So when you say that he had knowledge 10 before he made the first loan about this related 11 party receivable communication, you're 12 speculating, correct? 13 MR. BENNION: Objection, lacks foundation. 14 A Yeah, I don't know. 15 Q You agree you are speculating, or do you 16 have some personal knowledge of him receiving it 17 before? 18 A I am not sure if he received it before. 19 Q So you're speculating, correct? 20 A Correct. 21 Q Okay. Then you said you disagreed with 22 paragraph 2C as well. 23 A Yeah. 24 Q Why do you disagree with paragraph 2C? 25 A I think the word, intentional.</p>

<p>101</p> <p>1 Q But again, you had -- in May of 2022, when</p> <p>2 the first loan was made, you had no involvement</p> <p>3 whatsoever with Takeover, correct?</p> <p>4 A Correct.</p> <p>5 Q So you have no personal knowledge as to</p> <p>6 whether that information was intentionally</p> <p>7 withheld, correct?</p> <p>8 A Correct.</p> <p>9 Q And you haven't spoken to anybody in</p> <p>10 preparation for your deposition today who was at</p> <p>11 Takeover at the time, true?</p> <p>12 A Correct.</p> <p>13 Q And you haven't seen any -- you didn't</p> <p>14 review any documents in preparation for your</p> <p>15 deposition today, true?</p> <p>16 A True.</p> <p>17 Q So when you --</p> <p>18 THE REPORTER: I'm sorry. I didn't catch</p> <p>19 the last answer.</p> <p>20 THE WITNESS: True.</p> <p>21 Q So when you say you dispute because of the</p> <p>22 phrase, intentional withholding, you don't know</p> <p>23 one way or another whether Takeover did</p> <p>24 intentionally withhold that information, correct?</p> <p>25 A No, I guess not.</p>	<p>103</p> <p>1 A I believe so, yes.</p> <p>2 Q And do you understand the distinction</p> <p>3 between a written decision from the judge --</p> <p>4 A Yes.</p> <p>5 Q -- with analysis and law and stuff like</p> <p>6 that on the one hand, and on the other hand, a</p> <p>7 stipulation that the parties filed and asked that</p> <p>8 the judge just dismiss certain claims in the case?</p> <p>9 Do you understand the distinction between those</p> <p>10 two?</p> <p>11 A I do.</p> <p>12 MR. BENNION: Objection, lacks foundation.</p> <p>13 May call for speculation.</p> <p>14 Q What was your answer, sir? I didn't hear</p> <p>15 you.</p> <p>16 A Yes, I do.</p> <p>17 Q Now, the decision that you were referring</p> <p>18 to a moment ago, was it a written decision with</p> <p>19 analysis and case cites and things of nature, or</p> <p>20 was it a stipulation?</p> <p>21 A It was written from the judge as a ruling.</p> <p>22 Q Okay. And was this a -- was it an oral</p> <p>23 ruling that got put into a written transcript, or</p> <p>24 was it a written decision that the judge wrote</p> <p>25 out?</p>
<p>102</p> <p>1 Q Okay. Then we've got paragraph 2E. You</p> <p>2 said you disagreed with paragraph 2E, true?</p> <p>3 A True.</p> <p>4 Q And why do you disagree with paragraph 2E?</p> <p>5 A That the personal misuse by Mr. McBride</p> <p>6 was unfounded and --</p> <p>7 Q And what's your basis -- oh, I'm sorry.</p> <p>8 Sorry. I spoke over you. Go ahead. Finish your</p> <p>9 answer.</p> <p>10 A Sorry. It was in the -- it was a ruling</p> <p>11 in the Arizona case.</p> <p>12 Q I'm not sure I'm tracking.</p> <p>13 A The judge --</p> <p>14 Q What do you mean by that?</p> <p>15 A -- from the Arizona case said that there</p> <p>16 was no misuse of funds by Mr. McBride.</p> <p>17 Q Now, I know you weren't at Mr. McBride's</p> <p>18 -- well, the beginning of Mr. McBride's deposition</p> <p>19 the other day, but in your deposition and in his</p> <p>20 deposition, you both referenced a ruling from the</p> <p>21 Arizona case, and I'm having trouble understanding</p> <p>22 what you mean by that. Was there -- is it your</p> <p>23 position that there was some sort of written</p> <p>24 decision in the Arizona case that exonerated</p> <p>25 everything that Mr. McBride did?</p>	<p>104</p> <p>1 MR. BENNION: Same objection.</p> <p>2 A I'm not sure.</p> <p>3 Q Could have been one or the other? You</p> <p>4 don't know one way or another?</p> <p>5 A I don't know. I don't recall.</p> <p>6 Q And approximately when is -- when was this</p> <p>7 decision -- the reason I'm asking, I looked at the</p> <p>8 docket again today, and I'm having trouble finding</p> <p>9 this decision that you two are referencing, so I'm</p> <p>10 just trying to get a better sense for -- do you</p> <p>11 know when this decision was issued?</p> <p>12 A I don't know exactly, no.</p> <p>13 Q Ballpark is fine. Do you remember the</p> <p>14 year?</p> <p>15 A '22.</p> <p>16 Q And was it fall, winter, spring, summer?</p> <p>17 A I don't recall. It could have been</p> <p>18 anywhere between maybe May and November.</p> <p>19 Q So that's helpful. Thank you.</p> <p>20 Was this -- there was a -- as I understand</p> <p>21 it, there was a hearing around that November time</p> <p>22 frame, within a month or two of there. Do you</p> <p>23 remember that hearing?</p> <p>24 A I do.</p> <p>25 Q And this decision that you're talking</p>

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<p>105</p> <p>1 about, was it issued -- whether it be a transcript 2 or a written decision, was it issued right around 3 then? 4 A I don't remember if it was then or 5 previously. 6 Q Did you see the -- so now I think I do 7 understand what decision you're talking about. 8 Did you see the clarification that the judge in 9 Arizona forced your Nevada lawyers to file in our 10 case? 11 MR. BENNION: Objection, may call for 12 speculation. Lacks foundation. 13 A I don't believe I've seen the -- or read 14 the whole thing or any of that. 15 Q Okay. So going back to 2E. Your basis 16 for this is -- your basis for your disagreement is 17 you believe that the Arizona judge conclusively 18 ruled that Mr. McBride did not misuse company 19 funds. Is that what you're telling me? 20 A Yes. 21 Q And that's your only basis for saying 22 that, is that the judge ruled that, correct? 23 A Yes. 24 Q The Arizona judge. Is that correct? 25 A I said yes.</p>	<p>107</p> <p>1 first instance, but not in the second instance? 2 A Well, it was a ruling in a court case. 3 Q I'm sorry. I didn't hear you or I didn't 4 understand you. 5 A I said it was a written ruling in a court 6 case. 7 Q And you're saying that because you believe 8 that the initial -- we'll call it ruling -- was a 9 final ruling and determination on the merits of 10 whether Mr. McBride misused company funds. Is 11 that what you're telling me? 12 MR. BENNION: Objection, lacks foundation. 13 Calls for a legal conclusion. 14 A I'm not sure what you're asking. 15 Q I'm asking for why you personally 16 disagree, or why you, as the corporate 17 representative for Takeover, disagree with 2E. 18 And I thought you told me three or four times that 19 the reason and the sole reason is because you 20 believe the Arizona judge conclusively ruled 21 Mr. McBride did not misuse company funds, correct? 22 A Yes. We've looked into it as a company, 23 and we also found that it was no misuse. 24 Q Okay. So that's a second reason. That's 25 what I was asking you. All right. So there's two</p>
<p>106</p> <p>1 Q Okay. So if the Arizona judge 2 subsequently required a clarification to be filed 3 in the Nevada court to make clear that he, in 4 fact, had not made a ruling on the merits of that 5 question, you would still defer to the Arizona 6 judge, correct? 7 MR. BENNION: Objection, vague and 8 ambiguous. Lacks foundation. May call for a 9 legal conclusion. 10 A Yeah, I'm not sure. 11 Q Well, let me ask it this way: I asked you 12 why you disagreed with paragraph 2B, and you said 13 because the Arizona judge ruled on this issue and 14 said that Mr. McBride did not misuse company 15 funds, correct? 16 A Yeah. It's pretty vague, though, so -- 17 Q Okay. And so if after that decision that 18 you're referring to, if subsequent to that, the 19 Arizona judge issued a ruling requiring that a 20 clarification be filed in the Nevada court on that 21 very -- or on that point, you'd still defer to the 22 Arizona judge, correct? 23 MR. BENNION: Same objections. 24 A I'm not sure. 25 Q Why would you defer to the judge in the</p>	<p>108</p> <p>1 reasons you disagree with 2E. One, you think the 2 Arizona judge conclusively ruled on this issue and 3 found Mr. McBride to not misuse company funds, 4 correct? 5 A Correct. 6 Q And your second reason for disagreeing 7 with 2E is Takeover -- you and the others at 8 Takeover have looked into this issue and 9 determined that Mr. McBride did not misuse company 10 funds. Is that what you're saying? 11 A Correct. 12 Q Okay. Let's focus on the second of those 13 for a moment, then. What specifically did 14 Takeover as a company do to determine that 15 Mr. McBride did not misuse company funds? 16 A It was in conjunction with an audit. 17 Q And who was involved with both the audit 18 and the conclusion there was no misuse of company 19 funds? 20 A The auditing company -- 21 Q Which was? 22 A Ben Borges. 23 Q Can you spell the second portion there? 24 A B-O-R-G-E-S. 25 Q Is that a name or a firm?</p>

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<p>109</p> <p>1 A I believe it's his name and the firm.</p> <p>2 Q Okay. And I'm sorry. I cut you off. Who</p> <p>3 else? Ben Borges and who else?</p> <p>4 A We had a guy on our team named Marty</p> <p>5 Scott, was an accountant.</p> <p>6 Q And was he employed by Takeover or by --</p> <p>7 or was he an employee of Takeover, or was he an</p> <p>8 employee of somebody else?</p> <p>9 A Just we contracted him for the audit</p> <p>10 through Labor Smart.</p> <p>11 Q And who was his employer?</p> <p>12 A It's his own company.</p> <p>13 Q Okay. Who else was involved?</p> <p>14 A The board of directors of Labor Smart and</p> <p>15 Takeover.</p> <p>16 Q And who -- you already told me the --</p> <p>17 well, actually, when was this audit?</p> <p>18 A I believe June of 2023.</p> <p>19 Q So this was after Mr. McBride had already</p> <p>20 resigned from Takeover's board?</p> <p>21 A Yes.</p> <p>22 Q What was the purpose of doing the audit of</p> <p>23 Mr. McBride after he had already left the company?</p> <p>24 A It was in conjunction with the audit for</p> <p>25 the -- for both companies.</p>	<p>111</p> <p>1 other. Hopefully we can get to the bottom of it</p> <p>2 quickly. Are you aware of any subsequent writing</p> <p>3 from the Arizona judge after the decision you</p> <p>4 talked about that addressed whether Mr. McBride</p> <p>5 misused company funds or whether acts that were</p> <p>6 taken by Takeover while you were off the board</p> <p>7 were valid or invalid?</p> <p>8 MR. BENNION: Objection, vague and</p> <p>9 ambiguous, compound.</p> <p>10 A Yeah, two different questions. I'm not</p> <p>11 sure.</p> <p>12 Q Sure. Let me try and ask it this way. I</p> <p>13 know you don't know the exact date of the decision</p> <p>14 you've been referring to. Just for -- just so we</p> <p>15 can pin a date down, let's just pretend it was</p> <p>16 November 15, 2022. Are we on the same page?</p> <p>17 A Okay.</p> <p>18 Q Okay. So the decision you've been</p> <p>19 referring to on November 15, 2022. My question</p> <p>20 is, are you aware of any --</p> <p>21 THE REPORTER: I'm sorry. Part of your</p> <p>22 question cut out.</p> <p>23 Q -- decision or writing from the Arizona</p> <p>24 judge --</p> <p>25 THE REPORTER: I'm sorry to interrupt, but</p>
<p>110</p> <p>1 Q Both companies being Takeover and Labor</p> <p>2 Smart?</p> <p>3 A Correct.</p> <p>4 Q And this audit was after the Arizona court</p> <p>5 ruling that you've been referring to several times</p> <p>6 today, correct?</p> <p>7 A Yes.</p> <p>8 Q What did you personally do in conjunction</p> <p>9 with that audit before coming to the conclusion</p> <p>10 that there was no personal misuse?</p> <p>11 A I don't remember.</p> <p>12 Q Now, until the company made that</p> <p>13 conclusion on its own in June of 2023, Mr. McBride</p> <p>14 was still on the board of directors, correct? At</p> <p>15 least for a portion of the time, because he didn't</p> <p>16 resign until April 2023, correct?</p> <p>17 A Correct.</p> <p>18 Q So you had an individual who was on the</p> <p>19 board who at least had allegations against him of</p> <p>20 company -- or misuse of company property, correct?</p> <p>21 A I guess previous allegations from 2022 or</p> <p>22 2021.</p> <p>23 Q Okay. So then taking you back to your</p> <p>24 first reason, you said the Arizona judge ruled on</p> <p>25 it. Just I think we've been talking past each</p>	<p>112</p> <p>1 the question cut out.</p> <p>2 MR. HARVEY: Oh, I'm sorry. I cut out, or</p> <p>3 somebody else did?</p> <p>4 THE REPORTER: Part of your question cut</p> <p>5 out.</p> <p>6 MR. HARVEY: I'm sorry. Are you guys able</p> <p>7 to hear me?</p> <p>8 MR. BENNION: I am.</p> <p>9 THE WITNESS: Yeah, you sound good now.</p> <p>10 MR. HARVEY: Okay. Everyone else hear me?</p> <p>11 THE REPORTER: Yes. It was just part of</p> <p>12 that question.</p> <p>13 THE WITNESS: You just went out for a</p> <p>14 split second there.</p> <p>15 MR. HARVEY: Okay. So let me start over</p> <p>16 again to make sure we can all hear me.</p> <p>17 BY MR. HARVEY:</p> <p>18 Q So we've got our hypothetical date of</p> <p>19 November 15, 2022, as the date of the decision</p> <p>20 you've been referring to in relation to paragraph</p> <p>21 2E. Are we on the same page?</p> <p>22 A Okay.</p> <p>23 Q Are you aware of any post-November 15,</p> <p>24 2022, decision from the judge or writing from the</p> <p>25 judge that addresses the question of whether</p>

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<p>113</p> <p>1 Mr. McBride, in fact, conclusively misused company 2 funds? 3 MR. BENNION: Same objections. 4 A No, I'm not aware of that. 5 Q Are you aware of any post-November 15, 6 2022, written decision or other writing from the 7 judge that addressed the question of whether 8 actions that were taken by Takeover in the period 9 when you were not there, whether those were valid 10 actions taken on Takeover's behalf? 11 MR. BENNION: Same objections. 12 A I know that he did say that they were 13 possibly invalid, yeah. 14 Q After November 15, 2022? 15 A Yes. 16 Q Okay. So the decision we were talking 17 about, about the November 15 decision we've been 18 talking about, that only addressed the misuse of 19 company funds by Mr. McBride. It didn't address 20 the question of whether Takeover's acts were valid 21 in the time you were gone. Is that what you're 22 telling me? 23 MR. BENNION: Objection, lacks foundation, 24 calls for speculation. 25 A From what I recall, they did say that they</p>	<p>115</p> <p>1 Q And you also didn't talk to anyone who was 2 involved at Takeover at the time of the 3 amendments, and you also didn't review any 4 documents to prepare for today's deposition to 5 address the question of whether there were 6 misrepresentations on execution of the amendments, 7 correct? 8 A Correct. 9 Q And then you said you disagreed with 10 paragraph 2G; is that correct? 11 A Correct. 12 Q Why do you disagree with paragraph 2G? 13 A Well, Toby had no access to the accounts, 14 so he couldn't pay himself in compensation. Jason 15 Tucker was the only one with access. 16 Q Now, does that include the time after 17 Mr. Tucker was released from the board? In other 18 words, I thought you told me earlier that you 19 couldn't access the bank accounts for a couple 20 months, but then you regained access to them, 21 correct? 22 A Yes. 23 Q So who had access to the company accounts 24 after Tucker was gone and Takeover regained 25 control of the accounts?</p>
<p>114</p> <p>1 -- said that they may not be valid, including 2 Mr. Deppoleto's notes. 3 Q And I'm asking you, was that -- what you 4 were just referring to, was that in the November 5 15, 2022, decision, or was that in some different 6 decision? 7 A I believe it was in the November 15 one. 8 Q I'm sorry. It was in the November 15? 9 A I believe so. 10 Q Okay. All right. So moving on to 11 paragraph 2F. You said you disagreed with 12 paragraph 2F as well. Why do you disagree with 13 paragraph 2F? 14 A I'm not sure. 15 Q Again, because this one is focusing on 16 made upon the execution of such amendments, and 17 you weren't involved with Takeover upon the 18 execution of the amendments, correct? 19 A Correct. 20 Q So you don't have any personal knowledge 21 about whether this was actually an event of 22 default, correct? 23 A Correct. 24 MR. BENNION: I'm going to state a belated 25 objection that it may call for a legal conclusion.</p>	<p>116</p> <p>1 A Yeah, I guess Toby was -- had access. 2 Q Okay. So does that change your answer? 3 A So, yeah, there's probably a three-month 4 period where he had access to the account. 5 Q And do you have personal knowledge -- 6 A No misuse by it. 7 Q Oh, I'm sorry. What? 8 A I said there was no -- there was no 9 misuse, and there was no longer any 10 (indiscernible) from Mr. Deppoleto at the time. 11 Q So you're saying that by the time 12 Mr. McBride had access to the accounts, all of 13 Mr. Deppoleto's loans had been spent? 14 A There was, yeah, no money left in the 15 accounts. 16 Q As of today, has Takeover undertaken any 17 steps in an effort to repay Mr. Deppoleto? 18 A Ongoing settlement negotiations. 19 Q Other than settlement negotiations? 20 A No. 21 Q Did Takeover ever solicit funding from 22 other investors to repay Mr. Deppoleto? 23 A Yes. 24 Q When? 25 A 2023.</p>



<p>117</p> <p>1 Q What other investors?</p> <p>2 A I don't remember.</p> <p>3 Q Was it one investor? Several investors?</p> <p>4 A Probably several.</p> <p>5 Q You don't remember any of them?</p> <p>6 A No.</p> <p>7 Q What specific steps did Takeover do to</p> <p>8 solicit those investors?</p> <p>9 A I guess ask them for money.</p> <p>10 Q Were these face-to-face meetings, emails,</p> <p>11 phone calls?</p> <p>12 A Probably phone calls, yeah.</p> <p>13 Q When is the last time Takeover attempted</p> <p>14 to solicit funding from another investor?</p> <p>15 A I'm not sure.</p> <p>16 Q Did Takeover increase its efforts to sell</p> <p>17 more product?</p> <p>18 A There was no product to sell.</p> <p>19 Q Well, Takeover could, in theory, have more</p> <p>20 product made, correct?</p> <p>21 A Yeah. Just not in the NXT LVL name.</p> <p>22 Q And to date, Takeover has not repaid any</p> <p>23 amount of the funds that Mr. Deppoleto loaned to</p> <p>24 Takeover, correct?</p> <p>25 A Correct.</p>	<p>119</p> <p>1 Q That's the name that we saw in the bank</p> <p>2 statements in the earlier exhibit, correct?</p> <p>3 A Correct.</p> <p>4 Q And who did Manolio & Firestone represent?</p> <p>5 A Takeover.</p> <p>6 Q Then we've got Eric Bjorgum from Karish &</p> <p>7 Bjorgum, correct?</p> <p>8 A Correct.</p> <p>9 Q Who did Mr. Bjorgum represent?</p> <p>10 A He was previously Labor Smart.</p> <p>11 Q Then we've got Matthew Canini. Who did</p> <p>12 Mr. Canini represent?</p> <p>13 A Me.</p> <p>14 Q And then we've got Jennifer Reiter. Who</p> <p>15 did Jennifer Reiter represent?</p> <p>16 A Toby McBride.</p> <p>17 Q And then Joseph Pavlik apparently didn't</p> <p>18 have counsel. That's why he's getting this on his</p> <p>19 own --</p> <p>20 A Yeah.</p> <p>21 Q -- is that correct?</p> <p>22 Did Takeover's officers or directors</p> <p>23 discuss this notice after receiving it?</p> <p>24 A With our attorneys.</p> <p>25 Q Who all participated in the discussions?</p>
<p>118</p> <p>1 Q Does Takeover intend to repay</p> <p>2 Mr. Deppoleto?</p> <p>3 A If possible, yes.</p> <p>4 Q Let me take that one down. I'm going to</p> <p>5 show you Exhibit -- let's mark this 15.</p> <p>6 (Exhibit 15 was marked for identification</p> <p>7 and is attached to the transcript.)</p> <p>8 Q This is dated November 22, 2022. It's a</p> <p>9 letter from Husch Blackwell, Michael Brandess to</p> <p>10 several people, including Joseph Pavlik and then</p> <p>11 some lawyers, correct?</p> <p>12 A Yes.</p> <p>13 Q You recognize this document?</p> <p>14 A I do.</p> <p>15 Q And what is this document?</p> <p>16 A It's a notice of default.</p> <p>17 Q Second notice of default?</p> <p>18 A Yes.</p> <p>19 Q When did Takeover first receive this</p> <p>20 document?</p> <p>21 A I believe on or about November 22nd.</p> <p>22 Q And the lawyers listed -- we've got a</p> <p>23 couple of them, but we've got Manolio & Firestone,</p> <p>24 PLC, correct?</p> <p>25 A Yes.</p>	<p>120</p> <p>1 A I believe they were with Jennifer Reiter</p> <p>2 and Matthew Canini, myself, Toby McBride, and</p> <p>3 Joseph Pavlik.</p> <p>4 Q Anyone else?</p> <p>5 A I don't believe so.</p> <p>6 Q When was this -- well, was it one</p> <p>7 discussion, or was it several?</p> <p>8 A I don't recall.</p> <p>9 Q Shortly after November 22, within a couple</p> <p>10 days?</p> <p>11 A I would assume so, yes.</p> <p>12 Q Upon receiving this notice, did Takeover</p> <p>13 begin a process to repay Mr. Deppoleto's loans?</p> <p>14 MR. BENNION: Objection, may call for a</p> <p>15 legal conclusion.</p> <p>16 A Yeah. Still at this time, we had no</p> <p>17 access to the accounts, and there was no money in</p> <p>18 them.</p> <p>19 Q So Takeover did not begin a process to</p> <p>20 repay Mr. Deppoleto's loans?</p> <p>21 A No.</p> <p>22 Q I think we had a double-negative. That</p> <p>23 was my fault.</p> <p>24 Once Takeover received this notice, did</p> <p>25 Takeover begin a process to repay Mr. Deppoleto's</p>

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121	123
1 loans?	1 Counsel. Mr. Tom Zarro is going to address, as my
2 A No.	2 understanding, Deposition Topic Number 5 as well
3 MR. BENNION: Same objection.	3 as the topics set forth in the email that I sent
4 Q And you said the reason was because	4 to you -- I believe it was the day before
5 Takeover didn't have any money in its account?	5 yesterday in the Next Gen deposition subpoena or
6 A No access to the account.	6 the deposition topics. And you received that,
7 Q What about after Takeover received access	7 correct?
8 to the account? Did it begin a process to repay	8 MR. HARVEY: Yes.
9 Mr. Deppoleto at that point?	9 MR. BENNION: Okay. And I believe
10 A When we got access to the account, the	10 Mr. Holley is designated with respect to
11 account was negative.	11 deposition topics for the Next Gen Beverages
12 Q So after Takeover got access to the	12 deposition subpoena for Topics 4 and 6, and
13 account, Takeover did not begin a process of any	13 Mr. Zarro for Topics 1, 2, and -- 1, 2, 3, and 5.
14 sort to repay Mr. Deppoleto's loans, true?	14 MR. HARVEY: For Next Gen.
15 A Just settlement negotiations.	15 MR. BENNION: Correct. With respect to
16 Q Okay. As of today, how much money does	16 holding the deposition open, I mean, I'm going to
17 Takeover owe Mr. Deppoleto?	17 leave that. I'm not going to make any
18 MR. BENNION: Objection, calls for legal	18 representations on the record in response to that.
19 conclusion, may call for speculation, lacks	19 I appreciate your position. And I'm going to
20 foundation.	20 leave it at that.
21 A I think 1.5 million.	21 MR. HARVEY: Okay. So I believe we're
22 Q Plus interest?	22 done for today then.
23 A Yeah, I would assume so.	23 MR. BENNION: Thank you. Counsel, can I
24 MR. HARVEY: Okay. Why don't we take a	24 call you --
25 quick five-minute break. I may be done. I just	25 MR. HARVEY: Should we go off the record
122	124
1 want to go through my notes and make sure I didn't	1 first?
2 miss anything.	2 MR. BENNION: Yeah. Let's go off the
3 MR. BENNION: Sure.	3 record.
4 MR. HARVEY: Okay. So I'm going to go on	4 THE VIDEOGRAPHER: This marks the end of
5 mute and whatnot, and we'll hop back on in five	5 the deposition of Michael Holley, corporate
6 minutes.	6 representative of Takeover Industries,
7 THE VIDEOGRAPHER: Off the record at	7 Incorporated. The time is 11:24. We are off the
8 11:13.	8 record.
9 (Whereupon, a recess was taken.)	9 (Off the record at 11:24 a.m. PST.)
10 THE VIDEOGRAPHER: The time is 11:21.	10
11 We're back on the record.	11
12 MR. HARVEY: So there were five topics	12
13 listed in the Takeover deposition notice. We went	13
14 over this before, but just to be clear, we're	14
15 holding the deposition open as to Topic 5 because	15
16 Mr. Holley is not testifying on that topic;	16
17 Mr. Zarro is. So we're holding over -- or we're	17
18 holding open the Takeover corporate representative	18
19 deposition for that reason.	19
20 We're also holding it open because I don't	20
21 think this witness was sufficiently prepared on	21
22 some of the topics, but -- so that we're holding	22
23 it open, I don't have any additional questions for	23
24 Mr. Holley on Topics 1 through 4 today.	24
25 MR. BENNION: It's -- your point is noted,	25

Transcript of Mike Holley, Corporate Representative
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32 (125 to 128)

<p style="text-align: right;">125</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, MIKE HOLLEY, do hereby acknowledge that</p> <p>3 I have read and examined the foregoing testimony</p> <p>4 and the same is a true, correct, and complete</p> <p>5 transcription of the testimony given by me and any</p> <p>6 corrections appear on the attached errata sheet</p> <p>7 signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 (SIGNATURE) (Date)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">127</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2</p> <p>3 I, Catherine Galati, do hereby certify</p> <p>4 that the foregoing transcript is a true and</p> <p>5 correct record of the recorded proceedings; that</p> <p>6 said proceedings were transcribed to the best of</p> <p>7 my ability from the audio recording and supporting</p> <p>8 information; and that I am neither counsel for,</p> <p>9 related to, nor employed by any of the parties to</p> <p>10 this case and have no interest, financial or</p> <p>11 otherwise, in its outcome.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 </p> <p>16 _____</p> <p>17</p> <p>18</p> <p>19 CATHERINE GALATI</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">126</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2</p> <p>3 I, CHARLIE McGRATH, Notary Public in and</p> <p>4 for the State of California, do hereby certify</p> <p>5 that on November 19, 2024, the witness, MIKE</p> <p>6 HOLLEY, was sworn before me at the aforementioned</p> <p>7 location, and that I am neither counsel for,</p> <p>8 related to, nor employed by any of the parties to</p> <p>9 this case and have no interest, financial or</p> <p>10 otherwise, in its outcome.</p> <p>11 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>12 this 27th day of November 2024.</p> <p>13</p> <p>14 </p> <p>15 _____</p> <p>16</p> <p>17</p> <p>18 NOTARY PUBLIC IN AND FOR</p> <p>19 THE STATE OF CALIFORNIA</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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Transcript of Michael Holley, Corporate Representative
Conducted on November 22, 2024

1 (128 to 131)

128	<p>1 UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NEVADA</p> <p>3 -----x</p> <p>4 JAMES DEPPOLETO, :</p> <p>5 Plaintiff, :</p> <p>6 vs. : Case No.</p> <p>7 TAKEOVER INDUSTRIES INCORPORATED, : 2:22CV02013</p> <p>8 et al., :</p> <p>9 Defendants. :</p> <p>10 -----x</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Videotaped Deposition of MICHAEL HOLLEY</p> <p>15 CORPORATE REPRESENTATIVE OF NEXGEN BEVERAGES, LLC</p> <p>16 Volume II</p> <p>17 Conducted Virtually</p> <p>18 November, Friday 22, 2024</p> <p>19 11:32 a.m. PST</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 559923</p> <p>24 Pages: 128 - 162</p> <p>25 Recorded By: Charlie McGrath, AAERT CER</p>	130
129	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFF:</p> <p>4 PATRICK HARVEY, ESQUIRE</p> <p>5 HUSCH BLACKWELL, LLP</p> <p>6 511 N. Broadway</p> <p>7 Suite 1100</p> <p>8 Milwaukee, Wisconsin 53202</p> <p>9 Phone: 414.273.2100</p> <p>10 (Present via videoconference)</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANTS:</p> <p>13 DON BENNION, ESQUIRE</p> <p>14 LAW OFFICE OF DON BENNION</p> <p>15 6980 O Bannon Drive</p> <p>16 Suite 400</p> <p>17 Las Vegas, Nevada 89117</p> <p>18 Phone: 702.333.0777</p> <p>19 (Present via videoconference)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 Jesse Castro - PD Videographer</p>	131
130	<p>1 Deposition of MICHAEL HOLLEY, held virtually.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Pursuant to Notice, before Charlie McGrath,</p> <p>14 AAERT CER, Notary Public, in and for the State of</p> <p>15 California.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	131
131	<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF MICHAEL HOLLEY PAGE</p> <p>3 By Mr. Harvey 133</p> <p>4</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 (Attached to transcript.)</p> <p>8 DEPOSITION EXHIBIT PAGE</p> <p>9 Exhibit A Subpoena Duces Tecum to NextGen 135</p> <p>10 Exhibit B First Notice of Default 11/8/2022 141</p> <p>11 Exhibit C 6/14/23 Cease and Desist 155</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	131

Transcript of Michael Holley, Corporate Representative
Conducted on November 22, 2024

2 (132 to 135)

<p>132</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins Media</p> <p>3 Number 1 in the videotaped deposition of Mike</p> <p>4 Holley in the matter of Deppoleto v. Takeover</p> <p>5 Industries Incorporated, et al., in the United</p> <p>6 States District Court for the District of Nevada,</p> <p>7 case number 2:22CV02013. Today's date is November</p> <p>8 22nd, 2024. The time on the video monitor is</p> <p>9 11:32 a.m. The remote videographer today is Jesse</p> <p>10 Castro representing Planet Depos.</p> <p>11 All parties of this video deposition are</p> <p>12 attending remotely. Would counsel please voice</p> <p>13 identify themselves and state whom they represent?</p> <p>14 MR. HARVEY: Patrick Harvey for the</p> <p>15 Plaintiff.</p> <p>16 MR. BENNION: Don Bennion for Defendant</p> <p>17 Mike Holley and the other Defendants in the case.</p> <p>18 THE VIDEOGRAPHER: And the court</p> <p>19 reporter today is Charlie McGrath, also</p> <p>20 representing Planet Depos. The witness may now be</p> <p>21 sworn.</p> <p>22 THE REPORTER: I am a notary authorized</p> <p>23 to administer oaths, and this deposition will be</p> <p>24 recorded by electronic means. All parties</p> <p>25 understand and agree that any certified transcript</p>	<p>134</p> <p>1 Q Okay. The first exhibit I'm going to</p> <p>2 show you is the subpoena for today's deposition.</p> <p>3 Are you able to see my screen?</p> <p>4 A Yes, I am.</p> <p>5 Q Okay. And I understand that you are</p> <p>6 here today to speak as the corporate</p> <p>7 representative for NextGen Beverages, LLC, as to</p> <p>8 some of the topics on this topic list that I'm</p> <p>9 showing you in the subpoena; is that accurate?</p> <p>10 A That is.</p> <p>11 Q And my understanding is that you are</p> <p>12 going to be offering testimony on Topic 4, which</p> <p>13 is information regarding the decisions not to</p> <p>14 repay Mr. Deppoleto after issuance of his notice</p> <p>15 of default; is that correct?</p> <p>16 A Correct.</p> <p>17 Q And you were also here to offer</p> <p>18 testimony about information regarding the sale of</p> <p>19 -- that should be next-level products on NextGen's</p> <p>20 website; is that correct?</p> <p>21 A Yes.</p> <p>22 Q Okay.</p> <p>23 THE REPORTER: And forgive me. Will</p> <p>24 that be -- will that be Exhibit 16 or 19? Because</p> <p>25 we -- those -- it could be --</p>
<p>133</p> <p>1 produced from the recording of this proceeding is</p> <p>2 intended for all uses permitted under applicable</p> <p>3 procedural and evidentiary rules and laws and</p> <p>4 shall constitute written stipulation. The parties</p> <p>5 stipulate to the use and certification of this</p> <p>6 testimony consistent with applicable law of such.</p> <p>7 Hearing no objection, I will now swear the</p> <p>8 witness.</p> <p>9 Whereupon,</p> <p>10 MICHAEL HOLLEY,</p> <p>11 being first duly sworn or affirmed to testify to</p> <p>12 the truth, the whole truth, and nothing but the</p> <p>13 truth, was examined and testified as follows:</p> <p>14 EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>15 BY MR. HARVEY:</p> <p>16 Q Good afternoon for me. Good morning for</p> <p>17 you, Mr. Holley.</p> <p>18 A How are you today?</p> <p>19 Q Good. Yourself?</p> <p>20 A Good. Thanks.</p> <p>21 Q So, you've been deposed a couple of</p> <p>22 times in this case already. I'm not going to</p> <p>23 bother going over the deposition rules again if</p> <p>24 that's okay with you.</p> <p>25 A Yes. That's fine.</p>	<p>135</p> <p>1 MR. HARVEY: This will be -- actually,</p> <p>2 Counsel, do you remember if we did exhibits at</p> <p>3 yesterday's?</p> <p>4 MR. BENNION: I could take a look. I --</p> <p>5 I think it was about that, about 17 that we went</p> <p>6 through.</p> <p>7 MR. HARVEY: Well, no, just for the</p> <p>8 NextGen deposition -- the NextGen corporate</p> <p>9 representative deposition. I think I did do the</p> <p>10 subpoena as one. You know what? Let's just -- to</p> <p>11 move things along, let's mark that as Exhibit A</p> <p>12 because we used numbers yesterday.</p> <p>13 (EXHIBIT A MARKED)</p> <p>14 MR. BENNION: Yeah.</p> <p>15 MR. HARVEY: And to clarify for the</p> <p>16 record, we started the NextGen corporate</p> <p>17 representative deposition yesterday, and we</p> <p>18 covered Topics 1, 2, 3, and 5 with Mr. Zarro</p> <p>19 acting as the corporate representative for NextGen</p> <p>20 Beverages for those topics. So, this is actually</p> <p>21 a continuation of the NextGen corporate</p> <p>22 representative deposition, and we're just</p> <p>23 finishing the final two topics, which are, again,</p> <p>24 Topics 4 and 6.</p> <p>25 MR. BENNION: Correct.</p>

<p>136</p> <p>1 BY MR. HARVEY:</p> <p>2 Q Okay. Okay. Mr. Holley, what, if</p> <p>3 anything, did you do to prepare to offer testimony</p> <p>4 as a corporate representative on behalf of NextGen</p> <p>5 Beverages with respect to Topics 4 and 6?</p> <p>6 A I spoke with my attorney, Don Bennion.</p> <p>7 I spoke with Tom Zarro. I have gone over some</p> <p>8 interrogatories, looked at some bank records,</p> <p>9 things like that.</p> <p>10 Q Okay. You said a couple of things</p> <p>11 there. What documents did you review?</p> <p>12 A Some of the interrogatory questions,</p> <p>13 some bank statements, e-mails.</p> <p>14 Q Anything else? Oh, I'm sorry. Go</p> <p>15 ahead. You said e-mails?</p> <p>16 A Yeah.</p> <p>17 Q Which e-mails?</p> <p>18 A I don't know exactly. Just went through</p> <p>19 a bunch.</p> <p>20 Q And this was specifically to prepare for</p> <p>21 your deposition today on Topics 4 and 6 for</p> <p>22 NextGen.</p> <p>23 A Yes.</p> <p>24 Q You don't remember the topic of any of</p> <p>25 those e-mails?</p>	<p>138</p> <p>1 Q And what did you discuss?</p> <p>2 A Just his -- just going over some things</p> <p>3 from NextGen and from his deposition yesterday.</p> <p>4 Q What specifically did you go over with</p> <p>5 respect to NextGen?</p> <p>6 A I can't recall directly.</p> <p>7 Q So just last night, you don't remember</p> <p>8 what you spoke to him about?</p> <p>9 A I mean, it was a number of things that I</p> <p>10 -- I don't remember exactly what I took -- spoke</p> <p>11 about.</p> <p>12 Q Did you speak about NextGen selling</p> <p>13 next-level products on NextGen's website?</p> <p>14 MR. BENNION: And -- and I just want --</p> <p>15 I -- I just want to interpose an objection to the</p> <p>16 extent that I was also on a call with Mr. Zarro</p> <p>17 and Mr. Holley. I don't think it's the one he's</p> <p>18 referring to. But to the extent anything that I</p> <p>19 was involved in my -- that's attorney-client</p> <p>20 privilege, so I -- I would object. But anything</p> <p>21 with Mr. Zarro, go ahead.</p> <p>22 THE WITNESS: Yeah. No. I think when</p> <p>23 -- when I spoke about the -- the questions it was</p> <p>24 with Don on the phone.</p> <p>25 BY MR. HARVEY:</p>
<p>137</p> <p>1 A Most of them were back and forth with my</p> <p>2 attorney.</p> <p>3 Q Okay. So, not e-mails that have been</p> <p>4 produced in this case?</p> <p>5 A No.</p> <p>6 Q Okay. And you said bank statements?</p> <p>7 A Yes.</p> <p>8 Q Which bank statements?</p> <p>9 A Takeover and NextGen's.</p> <p>10 Q And the NextGen, were they Wells Fargo</p> <p>11 bank statements?</p> <p>12 A Yes.</p> <p>13 Q Okay. And you said interrogatory</p> <p>14 responses; is that correct?</p> <p>15 A Correct.</p> <p>16 Q Okay. And then you said you spoke with</p> <p>17 Tom Zarro; correct?</p> <p>18 A Yes.</p> <p>19 Q When did you speak with Tom Zarro?</p> <p>20 A Last night.</p> <p>21 Q Was anyone else on that call?</p> <p>22 A It was just Tom and I.</p> <p>23 Q How long did you speak to Mr. Zarro last</p> <p>24 night?</p> <p>25 A 45 minutes. Maybe an hour.</p>	<p>139</p> <p>1 Q Okay. I just want to make sure I'm</p> <p>2 clear because I thought you said you spoke to just</p> <p>3 Mr. Zarro, just you two on the phone yesterday; is</p> <p>4 that --</p> <p>5 A Yeah. It was mostly about his</p> <p>6 deposition.</p> <p>7 Q I -- I'm still confused. Was there a</p> <p>8 phone call yesterday that just involved you and</p> <p>9 Mr. Zarro and no one else?</p> <p>10 A Yes.</p> <p>11 Q And when did that occur?</p> <p>12 A Last night.</p> <p>13 Q Okay. Did you also speak about NextGen</p> <p>14 during that call with just you and Mr. Zarro?</p> <p>15 A I believe so.</p> <p>16 Q Okay. What did you discuss with Mr.</p> <p>17 Zarro last night about NextGen?</p> <p>18 A I don't remember exactly.</p> <p>19 Q Did you discuss NextGen selling</p> <p>20 next-level products on NextGen's website?</p> <p>21 A Possibly.</p> <p>22 Q And again, this is just last night, but</p> <p>23 you don't remember?</p> <p>24 A No, I don't remember.</p> <p>25 Q Did you discuss why Mr. Deppoleto was</p>

<p>140</p> <p>1 not repaid?</p> <p>2 A I don't recall.</p> <p>3 Q Okay. Did you speak to anyone other</p> <p>4 than Mr. Zarro and your counsel in preparation for</p> <p>5 today?</p> <p>6 A No.</p> <p>7 Q Why not?</p> <p>8 A I don't believe there's anybody else</p> <p>9 that anyone would need to talk to about this.</p> <p>10 Q You counsel referenced a call that he</p> <p>11 had with you and Mr. Zarro yesterday. Do you</p> <p>12 remember that call where the three of you were on</p> <p>13 the line?</p> <p>14 A I do.</p> <p>15 Q How long was that call?</p> <p>16 A Maybe a half hour.</p> <p>17 Q Was anyone else on the line other than</p> <p>18 you three?</p> <p>19 A No.</p> <p>20 Q Did you review any documents during that</p> <p>21 call?</p> <p>22 A No.</p> <p>23 Q Other than that -- the two calls that</p> <p>24 you've told me about from yesterday, have you</p> <p>25 spoken to anyone else in preparation for your</p>	<p>142</p> <p>1 A The notice of default, demand for</p> <p>2 payment, and the cease and desist.</p> <p>3 Q I know we've talked about this when you</p> <p>4 were wearing your hat as the Takeover corporate</p> <p>5 representative, but today, you're wearing the hat</p> <p>6 of the NextGen corporate representative.</p> <p>7 A Yes.</p> <p>8 Q My question for you, knowing that you're</p> <p>9 wearing that hat, did any NextGen representatives</p> <p>10 participate in discussions regarding Mr.</p> <p>11 Deppoleto's notice of default to Takeover?</p> <p>12 MR. BENNION: Patrick, you -- you --</p> <p>13 you're breaking up. I didn't hear the question at</p> <p>14 all.</p> <p>15 MR. HARVEY: Sure.</p> <p>16 BY MR. HARVEY:</p> <p>17 Q Did any NextGen representatives</p> <p>18 participate in discussions regarding Mr.</p> <p>19 Deppoleto's notice of default to Takeover?</p> <p>20 A In November? No.</p> <p>21 Q At any point?</p> <p>22 MR. BENNION: Counsel, you -- you cut</p> <p>23 out it again on -- could you repeat the question?</p> <p>24 I apologize. I just couldn't hear it.</p> <p>25 THE WITNESS: Did you hear me, or are we</p>
<p>141</p> <p>1 deposition today?</p> <p>2 A No.</p> <p>3 Q Did you make any handwritten or</p> <p>4 typewritten notes to assist you in testifying here</p> <p>5 today?</p> <p>6 A No.</p> <p>7 Q Okay. I'm going to show you a document</p> <p>8 here.</p> <p>9 A Okay.</p> <p>10 MR. HARVEY: One moment. So, we'll make</p> <p>11 this Exhibit B for the NextGen corporate</p> <p>12 representative deposition.</p> <p>13 (EXHIBIT B MARKED)</p> <p>14 BY MR. HARVEY:</p> <p>15 Q Are you able to see my screen, Mr.</p> <p>16 Holley?</p> <p>17 A Yes.</p> <p>18 Q This is the November 8th letter from</p> <p>19 Husch Blackwell to a number of people. The ray</p> <p>20 line says, Notice of default, demand for payment,</p> <p>21 and cease and desist; correct?</p> <p>22 A Correct.</p> <p>23 Q Do you recognize this document?</p> <p>24 A I do.</p> <p>25 Q And what is it?</p>	<p>143</p> <p>1 frozen?</p> <p>2 MR. HARVEY: You said in November -- are</p> <p>3 you guys able to hear me?</p> <p>4 MR. BENNION: Yeah, but it -- it's</p> <p>5 choppy. And it -- this could be on my end. I</p> <p>6 just didn't hear the full question, Patrick, about</p> <p>7 the discussions. That's about all I heard.</p> <p>8 MR. HARVEY: Yeah. Mike looks like he's</p> <p>9 frozen. Mike, are you -- are you frozen?</p> <p>10 MR. BENNION: Yes. Mike --</p> <p>11 MR. HARVEY: Why don't we go off the</p> <p>12 record until he is able to unfreeze?</p> <p>13 THE VIDEOGRAPHER: We are going off the</p> <p>14 record. The time is 11:44 a.m.</p> <p>15 (OFF THE RECORD)</p> <p>16 THE VIDEOGRAPHER: Standby. We are</p> <p>17 going back on the record. The time is 11:48 a.m.</p> <p>18 BY MR. HARVEY:</p> <p>19 Q Mr. Holley, before we had the technical</p> <p>20 difficulties, I was asking you about Exhibit B,</p> <p>21 which was the first notice of default that was</p> <p>22 sent to Takeover. And I can pull it up again if</p> <p>23 you want, but before we hopped off, I was asking</p> <p>24 you whether any NextGen representatives</p> <p>25 participated in discussions regarding Mr.</p>


<p>144</p> <p>1 Deppoleto's notice of default. And I think you 2 said, you mean in November, and I said, at any 3 point thereafter, and I think you froze at that 4 point -- 5 A Oh, okay. 6 Q -- or your screen froze. So, if you 7 answered it, I'm sorry, but I'm going to ask you 8 again. At any point in time, did any NextGen 9 representative participate in discussions 10 regarding Mr. Deppoleto's notice of default to 11 Takeover? 12 A I mean, yes, because, you know, I'm -- 13 I'm a Takeover and NextGen director, since -- 14 along with Tom Zarro. So, yeah, it's all been 15 spoken about. 16 Q Did any other NextGen representatives, 17 other than you and Mr. Zarro, participate in 18 discussions regarding Mr. Deppoleto's notice of 19 default to Takeover? 20 A No. 21 Q And the discussion, was it you and Mr. 22 Zarro then that discussed it? 23 A Yes. 24 Q When did you discuss it with Mr. Zarro? 25 A I don't recall exactly.</p>	<p>146</p> <p>1 correctly that after that discussion, you spoke to 2 Mr. Zarro about his discussion with Mr. Deppoleto? 3 A Yes. 4 Q And can you walk me through that 5 discussion that you had with Mr. Zarro? 6 A You know, I think there was a number of 7 different things where -- that were offered to Mr. 8 Deppoleto where he would take the -- the game of 9 shots and -- and take over for, you know -- and -- 10 and he would remove his default. Other -- other 11 -- I don't know if there was other things that 12 were spoken about. 13 Q That's all you recall from the 14 discussion that you had with Mr. Zarro in late 15 November, early December 2022. 16 A And then there was other talks of 17 settlements with shares and things like that. 18 Q Other than the late November or December 19 2022 discussion with Mr. Zarro that you just 20 described, how many other discussions were there 21 between you and Mr. Zarro? 22 MR. BENNION: I -- I want to state an 23 objection, just to the extent that if any of these 24 discussions were had with their attorneys present, 25 that the objection would be based on the</p>
<p>145</p> <p>1 Q Was it around the date of the November 2 8th, 2022, notice of default, or was this later 3 on? 4 A NextGen wasn't formed until June of 5 2023, so like eight months later. 6 Q Right. But I'm asking, at any point, 7 did you and Mr. Zarro discuss the November 8th, 8 2022 notice of default? 9 A Yes. 10 Q When and how many times? 11 A I don't recall exactly. 12 Q 2022? 13 A No. NextGen wasn't formed until '23. 14 Q No. Whether you were wearing NextGen 15 hats or not, I'm asking if you had a discussion 16 with Mr. Zarro. 17 A Yes. Probably December or late 18 November. 19 Q And what were the content -- or what was 20 the content of those discussions? 21 A Mr. Zarro reached out to James Deppoleto 22 and tried to come to an agreement with him. Tried 23 to -- tried to see if we could work something out 24 together. 25 Q And after Mr. -- am I inferring</p>	<p>147</p> <p>1 attorney/client privilege. But anyway, just for 2 clarity. 3 MR. HARVEY: Well, and on that point, 4 too, Mr. Zarro was not a party to this case and I 5 don't believe was represented for a number of 6 months after we filed it. So, if he was 7 participating in discussions with attorneys 8 involved when he was not represented by counsel, I 9 -- those are not privileged, so that we're on the 10 same page. 11 MR. BENNION: I understand your point. 12 Just wanted to make a record. 13 BY MR. HARVEY: 14 Q So, now we've thoroughly confused you, 15 Mr. Holley. Let me ask it this way. 16 A Okay. 17 Q Setting aside the late November, early 18 December discussion you had with Mr. Zarro, when's 19 the next time you remember discussing these issues 20 with Mr. Zarro and was there a lawyer on the call 21 at that point? 22 A I mean, most of the time there was a 23 lawyer on the call. We -- we -- we've been in, 24 you know, on and off in settlement negotiations. 25 We're trying to -- since -- since November.</p>

<p>148</p> <p>1 Q Now, was -- you said most of the time a 2 lawyer was on the call with -- were there calls 3 before Mr. Zarro was added as an individual 4 Defendant? Like, you were added as an individual 5 Defendant? 6 A Were there calls before that? 7 Q Do you understand the distinction I'm 8 drawing? Yeah. Let me give you some context. 9 So, when we initially filed the complaint in 10 December 2022, it was initially just against 11 takeover. Yourself, Mr. Zarro, the other 12 individuals were not individual defendants at that 13 point. And it wasn't until later that we amended 14 the complaint. And I can find the date on that. 15 If you give me two seconds. But my 16 understanding is that Mr. Zarro was not 17 represented until we actually named him as a 18 Defendant. And give me two seconds. I can tell 19 you filed the amended complaint. And September 20 19th, 2023. So, from December 2022 through 21 September 19th, 2023, and you can tell me if I'm 22 wrong. I don't believe Mr. Zarro was represented 23 by counsel. 24 A He had his own counsel on a lot of the 25 calls.</p>	<p>150</p> <p>1 Q Did you ever exchange text messages or 2 e-mails with Mr. Zarro with no lawyer copied on 3 them? 4 A Text messages, no. E-mails, probably 5 not. 6 Q Okay. Now, the -- now we're going into 7 the bucket where attorneys may have been on the 8 calls. During those calls, do you remember any 9 calls on which Mr. Zarro's lawyer was not present? 10 A No. 11 Q Okay. So, in any event, you told me 12 that there was a discussion that you had with him 13 in late November or December 2022; correct? 14 A Yes. 15 Q These subsequent discussions, whether 16 there were lawyers involved or not, do you 17 remember when those occurred? 18 A Not exactly, no. 19 Q Was it -- 20 A They were fairly regular -- 21 Q I want to say -- 22 A -- maybe once or twice a week. 23 Q Throughout the course of the litigation? 24 A Yes. 25 Q Okay. All right. And I know we've</p>
<p>149</p> <p>1 MR. BENNION: And therefore, I'm going 2 to say a belated objection to repeat my -- my 3 prior objection about the attorney/client 4 privilege. 5 THE REPORTER: I'm sorry. The end of 6 your objection trailed off. 7 MR. BENNION: To the extent it existed, 8 meaning the attorney/client privilege. 9 BY MR. HARVEY: 10 Q So, let's try -- let's try and do this a 11 little easier. Set aside any discussions you had 12 with Mr. Zarro at any point when lawyers were on 13 the call. So, put those in one bucket. Were 14 there any discussions that were between you and 15 Mr. Zarro and anyone else when there were no 16 lawyers on the call other than the November -- 17 December 2022 discussion you already told me 18 about? 19 A I'm going to say most of them were with 20 -- with the attorneys. 21 Q Do you remember anything that did not 22 involve attorneys? 23 A I'm sure there probably was, but I don't 24 recall exactly what was said or when they were or 25 how many there were.</p>	<p>151</p> <p>1 talked about this a little bit in other 2 depositions, but again, you're wearing the NextGen 3 corporate representative hat today. So, now I'm 4 asking you in your capacity as the NextGen 5 corporate representative. First of all, NextGen 6 sells its product through a brand called LOCK'DIN; 7 correct? 8 A Correct. 9 Q And that's L-O-C-K-'-D I-N; correct? 10 A Yes. 11 Q Did NextGen/LOCK'DIN sell NXT LVL, and 12 that's NXT space LVL products on 13 LOCK'DIN/NextGen's website? 14 A They were posted on there for 15 approximately two days. 16 Q And they were only pulled down -- 17 A Just again. 18 Q They were only pulled down because -- 19 you got to let me finish my question; remember? 20 A Okay. 21 Q No problem. They were only pulled down 22 because you received our cease and desist letter; 23 correct? 24 A I believe. 25 MR. BENNION: Objection. Calls for</p>

Conducted on November 22, 2024

<p>152</p> <p>1 speculation. Go ahead.</p> <p>2 THE WITNESS: I believe so, yes.</p> <p>3 BY MR. HARVEY:</p> <p>4 Q And the products that were advertised or</p> <p>5 the next level products that were advertised on</p> <p>6 the NextGen/LOCK'DIN website, did NextGen pay</p> <p>7 takeover for those products?</p> <p>8 A No. No. If-- if you clicked on the</p> <p>9 products, they would go right to the takeover</p> <p>10 Shopify account. Then the money would go directly</p> <p>11 into a takeover account.</p> <p>12 Q What was the purpose of advertising</p> <p>13 takeovers products on NexGen's website?</p> <p>14 A Well, we were given a few months to sell</p> <p>15 off any next level products in the trademark</p> <p>16 dispute. And so we were trying to make some money</p> <p>17 for takeover.</p> <p>18 Q Why not sell them on takeover's own</p> <p>19 website?</p> <p>20 A We were locked out of that website.</p> <p>21 Jason Tucker and his wife had all the passwords.</p> <p>22 Q How did NextGen obtain those next level</p> <p>23 products?</p> <p>24 A In what -- what way are you asking?</p> <p>25 Q Well, if somebody clicked on the link to</p>	<p>154</p> <p>1 that they would be delivered and that the order</p> <p>2 would be completed?</p> <p>3 A It's just a -- it's a third party</p> <p>4 function, so there's a Shopify account and when</p> <p>5 you click on it, it sends the order to that</p> <p>6 warehouse, and then the warehouse delivers it.</p> <p>7 Q But next level -- not next level.</p> <p>8 NextGen had the authority to call the warehouse</p> <p>9 and say, don't ship anything; correct?</p> <p>10 A NextGen wouldn't have, no.</p> <p>11 Q Who decided to sell the Next level</p> <p>12 products on LOCK'DIN's website?</p> <p>13 A I don't know who that was.</p> <p>14 Q NextGen didn't sell any other</p> <p>15 competitive products on its website; did it?</p> <p>16 MR. BENNION: Just state an objection to</p> <p>17 the form of the question. Maybe be vague and</p> <p>18 ambiguous. Go ahead.</p> <p>19 THE WITNESS: Competitive products. We</p> <p>20 didn't -- NextGen didn't have any competitive</p> <p>21 products to the -- the energy shot, the gamer</p> <p>22 shot.</p> <p>23 BY MR. HARVEY:</p> <p>24 Q Did NextGen sell any products other than</p> <p>25 locked In products on its website, other than</p>
<p>153</p> <p>1 purchase those next level products, somebody would</p> <p>2 have had to ship them to the purchaser; correct?</p> <p>3 A Yeah. It goes directly to a</p> <p>4 distribution company where the takeover products</p> <p>5 were.</p> <p>6 Q And -- and that distribution company</p> <p>7 that was one warehouse in Georgia; correct?</p> <p>8 A I believe it was Wisconsin.</p> <p>9 Q Okay. Well, wherever the warehouse was,</p> <p>10 it was the same warehouse where NextGen's products</p> <p>11 were stored; correct?</p> <p>12 A No. A different warehouse.</p> <p>13 Q Different warehouse. So, your testimony</p> <p>14 is that the NextGen/LOCK'DIN products were stored</p> <p>15 in a completely different facility than the</p> <p>16 takeover next level products. Is that what you're</p> <p>17 telling me?</p> <p>18 A Those particular products, yes.</p> <p>19 Q So, how was NextGen going to ensure</p> <p>20 delivery if someone had clicked on the next level</p> <p>21 products?</p> <p>22 A It -- it's all on --</p> <p>23 Q In other words -- in other words, if</p> <p>24 NextGen didn't have physical control over the next</p> <p>25 level products, how was NextGen going to ensure</p>	<p>155</p> <p>1 NextGen products?</p> <p>2 A Yeah, we sold merchandise, we sold -- I</p> <p>3 don't know, other -- other things.</p> <p>4 Q Other than NextGen products, and the</p> <p>5 next level products, NextGen did not sell any</p> <p>6 other products on its website; correct?</p> <p>7 A Correct.</p> <p>8 Q And NextGen was advertising the next</p> <p>9 level products to be sold at a 50 percent discount</p> <p>10 off of the retail price; correct?</p> <p>11 A NextGen did not do that. That was a</p> <p>12 takeover.</p> <p>13 Q Well, here, let's pull the website up.</p> <p>14 I'm going to share my screen with you. We'll mark</p> <p>15 this Exhibit C.</p> <p>16 (EXHIBIT C MARKED)</p> <p>17 BY MR. HARVEY:</p> <p>18 Q Are you able to see my screen, Mr.</p> <p>19 Holley?</p> <p>20 A Yeah, it looks like the notice of</p> <p>21 default.</p> <p>22 Q This is actually a little different.</p> <p>23 This is a June 14th, 2023 letter from Hush</p> <p>24 Blackwell saying, cease and desist and notice of</p> <p>25 default. So, it's not the notice of default we</p>

<p>156</p> <p>1 were talking about before. This is a later one --</p> <p>2 A Okay.</p> <p>3 Q -- June 2023. Are you with me?</p> <p>4 A Yes.</p> <p>5 Q And you've seen this Exhibit 4 because</p> <p>6 it's also marked Holley Exhibit 1; correct?</p> <p>7 A Yes.</p> <p>8 Q So, if we go down a couple of pages, I</p> <p>9 think it's page 5 of the PDF is where it starts.</p> <p>10 And continue to go down. We've got LOCK'DIN</p> <p>11 products, and this is the LOCK'DIN website;</p> <p>12 correct?</p> <p>13 A Yes. Appears to be.</p> <p>14 Q In the bottom left, it says</p> <p>15 HTTPS://lockedin.com, and then there's some other</p> <p>16 information; correct?</p> <p>17 A Correct.</p> <p>18 Q And we see this was printed on June</p> <p>19 12th, 2023; correct?</p> <p>20 A Okay.</p> <p>21 Q And then if we scroll down, on the</p> <p>22 LOCK'DIN website, we've got next level products</p> <p>23 being advertised; correct?</p> <p>24 A Yeah. Do you see how it says takeover</p> <p>25 Industries ran on it.</p>	<p>158</p> <p>1 objection. May call for a legal conclusion. Go</p> <p>2 ahead.</p> <p>3 THE WITNESS: Yeah. I what manner would</p> <p>4 you consider that a competitor?</p> <p>5 BY MR. HARVEY:</p> <p>6 Q Well, Amazon sells basically everything</p> <p>7 in the world. They're not a competitor to</p> <p>8 takeover; correct?</p> <p>9 A No. They sold takeover, yeah</p> <p>10 Q Let me ask you this way. Amazon is not</p> <p>11 a beverage company; correct?</p> <p>12 A No, but they sell beverages.</p> <p>13 Q Shopify is not a beverage company;</p> <p>14 correct?</p> <p>15 A No. But they sell beverages.</p> <p>16 Q Etsy is not a beverage company; correct?</p> <p>17 A No.</p> <p>18 Q We have a double negative. Is there a</p> <p>19 beverage company?</p> <p>20 A I said, no.</p> <p>21 Q Is eBay a beverage company?</p> <p>22 A No.</p> <p>23 Q Do any companies that are beverage</p> <p>24 companies sell next level products on their</p> <p>25 website other than LOCK'DIN?</p>
<p>157</p> <p>1 Q This is the LOCK'DIN website, though;</p> <p>2 correct?</p> <p>3 A It's on the LOCK'DIN website, yes.</p> <p>4 Q And the price for the -- well, for both</p> <p>5 of the gamer shots, being advertised from next</p> <p>6 level is half of the retail price; correct?</p> <p>7 A Yeah. I mean, that's not normal retail</p> <p>8 price, but yeah.</p> <p>9 Q Well, Lock In's website, it's suggesting</p> <p>10 the retail price is 4,199. Are you saying that</p> <p>11 LOCK'DIN was falsely advertising the retail price?</p> <p>12 A LOCK'DIN was not doing any of that.</p> <p>13 Next level products were --</p> <p>14 Q Retail.</p> <p>15 A Next level products were available on</p> <p>16 multiple people's websites.</p> <p>17 Q Who else's?</p> <p>18 A Amazon, there was Shopify, there's Etsy,</p> <p>19 eBay, Walmart.</p> <p>20 Q None of those companies are competitors</p> <p>21 to takeover; are they?</p> <p>22 A They all sell competing products, yes.</p> <p>23 Q No, but the companies themselves are not</p> <p>24 competitors to takeover; correct?</p> <p>25 MR. BENNION: I'm going to state an</p>	<p>159</p> <p>1 A I believe there was a couple. I don't</p> <p>2 remember what they were exactly.</p> <p>3 Q You believe that other beverage</p> <p>4 companies sold next level products on their</p> <p>5 website?</p> <p>6 A Yes.</p> <p>7 Q From when to when?</p> <p>8 A I don't know, I would say, middle of '21</p> <p>9 to until sometime the end of 2022.</p> <p>10 Q Why did takeover/Next level stop selling</p> <p>11 next level products on other beverage companies'</p> <p>12 website at the end of 2022?</p> <p>13 A There was no more products. Trademark</p> <p>14 was gone --</p> <p>15 Q And yet --</p> <p>16 A -- and told not to sell them. We only</p> <p>17 had three months.</p> <p>18 Q And yet -- and yet in June 2023,</p> <p>19 LOCK'DIN had next level product to sell because it</p> <p>20 was advertising it on its website; correct?</p> <p>21 A I think that was right at the end of the</p> <p>22 time frame to sell off next level products.</p> <p>23 Q So, there was product at the end of 2022</p> <p>24 that other beverage companies could have sold for</p> <p>25 takeover; correct?</p>

<p>160</p> <p>1 A They could have, yes. I believe they're 2 actually still listed on eBay and a couple of 3 other sites, too. 4 Q And your testimony is that despite 5 advertising these next level products on 6 LOCK'DIN's website, there were no actual sales. 7 Is that what you said? 8 A Yeah. They none of them sold. 9 Q And that's because you took them down 10 after two days because of the cease and desist 11 letter? 12 A Correct. 13 MR. HARVEY: Okay. I believe that's all 14 I have for you, Mr. Holley. Thank you. 15 THE WITNESS: All right. 16 MR. BENNION: No questions. 17 THE REPORTER: Okay, where I'll sit 18 then. 19 MR. HARVEY: Thanks, Mike. I think you 20 can go unless the court reporters have anything. 21 THE REPORTER: One second. We just have 22 to read off the record, Jesse. 23 THE VIDEOGRAPHER: We are going off the 24 record. The time is 2:10 p.m. 25 (Off the record at 12:10 p.m.)</p>	<p>162</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Krystin Spolar, CET, do hereby certify 3 that this transcript was prepared from the digital 4 audio recording of the foregoing proceeding; that 5 said proceedings were reduced to typewriting under 6 my supervision; that said transcript is a true and 7 accurate record of the proceedings to the best of 8 my knowledge, skills, and ability; and that I am 9 neither counsel for, related to, nor employed by any 10 of the parties to the case and have no interest, 11 financial or otherwise, in its outcome. 12 <i>Krystin Spolar</i> 13 _____ 14 Krystin Spolar, CET 15 Planet Depos, LLC 16 December 6, 2024 17 18 19 20 21 22 23 24 25</p>
<p>161</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, Charlie McGrath, AAERT CER, the officer 3 before whom the foregoing proceedings were 4 taken, do hereby certify that any witness(es) in 5 the foregoing proceedings were fully sworn; 6 that the proceedings were recorded by me and 7 thereafter reduced to typewriting by a 8 qualified transcriptionist; that said digital 9 audio recording of said proceedings are a 10 true and accurate record to the best of my 11 knowledge, skills, and ability; and that I am 12 neither counsel for, related to, nor employed 13 by any of the parties to this case and have 14 no interest, financial or otherwise, in its 15 outcome. 16  17 _____ 18 Charlie McGrath, AAERT CER, Notary Public, for the 19 State of California 20 December 6, 2024 21 22 23 24 25</p>	

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